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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 8

UNITED STATES, APPELLANT,

vs.

HUCK MANUFACTURING COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

FILED SEPTEMBER 25, 1964
PROBABLE JURISDICTION NOTED JANUARY 18, 1965

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 538

UNITED STATES, APPELLANT,

vs.

HUCK MANUFACTURING COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

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[fol. a] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Civil No. 21791

UNITED STATES OF AMERICA, Plaintiff,

v.

HUCK MANUFACTURING COMPANY, AND TOWNSEND COMPANY, Defendants.

COMPLAINT—Filed October 24, 1961

United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants named herein and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. § 4), as amended, entitled, "An Act to protect the trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of said Act.

2. Each of the defendants maintains an office, transacts business, and is found within the Eastern District of Michigan.

II

Defendants

3. The corporations named below are hereby made defendants herein. Each said corporation is organized and exists under the laws of the state indicated, has its principal place of business in the city indicated, and manufactures lockbolts in plants at the locations indicated. Within

the period of time covered by this complaint said defend-
[fol. b] ants have engaged in business of manufacturing and selling lockbolts throughout the United States;

Name of Corporation	State of Incorporation	Principal Place of Business	Location of Plants
Huck Manufacturing Company	Michigan	Detroit, Michigan	Detroit, Michigan
Townsend Company	Pennsylvania	Beaver Falls, Pennsylvania	Ellwood City, Pennsylvania Santa Ana, California

4. The acts alleged in this complaint have been done by each defendant were authorized, ordered or done by the officers, agents, employees or representatives of such defendant while actively engaged in the management, direction or control of its affairs.

III

Definitions

5. As used herein, "lockbolt" incorporates the terms "lockbolt pin" and "lockbolt collar" and means a two-part metal fastening device used to permanently join together two or more pieces of metal in the manner illustrated, but not limited, by Appendices A and B attached to this complaint. A lockbolt consists of a headed metal pin with a grooved shank about which the lockbolt collar is swaged. A lockbolt collar is that part of the lockbolt consisting of a cylindrical piece of metal designed to slip over the lockbolt pin and be swaged onto its grooves.

IV

Trade and Commerce

6. Lockbolts are patented devices used extensively in various domestic industries to fasten together two or more pieces of metal. They are produced in various shapes and sizes depending on the use for which they are intended. Lockbolts are also constructed of a number of different metals including alloy steels, aluminum and titanium.
[fol. c] 7. The major portion of all lockbolts are designed

for use in the airframe manufacturing industry. Almost every major airplane manufacturer in the United States uses vast quantities of lockbolts. Hundreds of thousands of them are used to hold together the wings and body of each large jet aircraft produced for both civilian and military use. Lockbolts are used extensively in the production of military and civilian propeller-driven aircraft. Lockbolts are also used in the manufacture and repair of truck-trailers, house-trailers, railroad cars and ships, including United States naval vessels. They are also used in many other industrial applications where formerly a nut and bolt or rivet or other fastener would have been used.

8. A lockbolt is superior to the ordinary rivet in that a rivet must be made of malleable material and can, therefore, be cut or sheared by the movement of the metal sheets which it joins. The lockbolt pin, however, can be made of metal strong enough to withstand the shearing action. Unlike the rivet, the lockbolt also pulls together the pieces of metal being joined and thereby eliminates "sheet-gap." Unlike a nut and bolt a lockbolt cannot be loosened by either vibration or the passage of time.

9. Although other devices are also used to join individual pieces of metal, none have the peculiar advantages of lockbolts.

10. Particularly in the aircraft manufacturing industry, once the use of the lockbolt fastener has been specified by a manufacturer's engineering staff, other fastening devices cannot thereafter be readily substituted.

11. Lockbolts are manufactured and sold by the Huck Manufacturing Company of Detroit, Michigan, under patents assigned to it. Huck Manufacturing Company has licensed Townsend Company of Beaver Falls, Pennsylvania, to manufacture and sell a general line of lockbolts and has also licensed two other firms to manufacture and sell lockbolts of titanium only.

[fol. d] 12. Lockbolts are produced in Michigan, California and Pennsylvania and shipped in interstate commerce to customers throughout the United States.

13. Lockbolts sold in the United States in recent years were valued at approximately $16 million annually.

V

Offenses Charged

14. Beginning at least as early as 1954, the exact date being to the plaintiff unknown, and continuing thereafter up to and including the date of the filing of this complaint, the defendants have engaged in a combination and conspiracy in unreasonable restraint of trade and to monopolize the aforesaid interstate trade and commerce in lockbolts in violation of Sections 1 and 2 of the Sherman Act. The unlawful combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

15. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants, the substantial terms of which have been and are:

a. To fix and maintain prices, terms and conditions for the sale of lockbolts manufactured in the United States by defendants who are the only producers of a general line of lockbolts;

b. To limit the number of licensees permitted to manufacture lockbolts;

c. To require the consent of the only general licensee before the patent owner is allowed to license any other firm for the production of its general line of lockbolts;

d. To have the defendants who are the two dominant manufacturers of lockbolts cross-license each other on all improvements of and substitutes for lockbolts which might in the future be developed by either defendant.

[f l. e] 16. In formulating and effectuating the aforesaid unlawful combination and conspiracy the defendants have entered into various agreements among themselves and done various things and performed various acts including among others, the following:

a. Have negotiated with each other for a license to manufacture and sell lockbolts which would limit the lockbolt business to the two defendants only;

b. Held a secret meeting in 1954 from which their attorneys were specifically excluded. At this meeting the defendants agreed that in addition to the written terms of a patent license, defendant Townsend Company would follow the prices fixed by defendant Huck Manufacturing Company so long as Huck Manufacturing Company refrained from licensing any other firms for the general production and sale of lockbolts;

c. Entered into a series of license agreements by which each defendant agreed to cross-license the other for all improvements made in the manufacture of lockbolts and substitutes for lockbolts and related products;

d. Have since the date of the oral agreement referred to above, fixed substantially identical price levels for all types of lockbolts produced by both defendants;

e. The patent owner, has since the date of the oral agreement referred to above, refused to license the manufacture of a general line of lockbolts to any other firm despite requests for licenses from qualified manufactures.

[fol. f]

VI

Effects

17. The combination and conspiracy hereinbefore charged has had the following effects:

a. Prices for the sale of the types of lockbolts produced by both defendants have been artificially enhanced and the cost of construction, maintenance and repair of military and civilian aircraft and other articles of commerce have been substantially increased;

b. Price competition among the corporate defendants in the sale of lockbolts has been forestalled;

c. The entrance of other firms into the lockbolt manufacturing business has been prevented;

d. The advance of technology relating to lockbolts has been artificially restricted;

e. The monopoly authorized to the patent owner has been extended beyond the scope permitted by law;

f. Interstate and foreign trade and commerce in the sale and distribution of lockbolts has been unreasonably restrained.

VII

Prayer

Wherefore, plaintiff demands:

1. That the aforesaid agreement, contract, combination, conspiracy and attempt to monopolize be decreed unlawful and in violation of Sections 1 and 2 of the Sherman Act.

2. That the court adjudge and decree that defendants have combined and conspired to restrain and to monopolize interstate trade and commerce in lockbolts in violation of Sections 1 and 2 of the Sherman Act.

[fol. g] 3. That the Court enter such orders as it may deem necessary and appropriate to enjoin and prohibit continuation of such unlawful combination and conspiracy, or any like or similar combination or conspiracy, or any other combination or conspiracy having like or similar effects.

4. That the Court adjudge and decree that defendants have unlawfully used patents and patent rights owned or controlled by defendant Huck Manufacturing Company in instituting, effectuating, and maintaining the aforesaid combination, and conspiracy, and that the court enter such order regarding such patents, patent rights and the techniques of manufacturing the devices involved as may appear necessary and appropriate to dissipate the effects of said unlawful combination and conspiracy, and to restore competition in the manufacture and sale of lockbolts.

5. That the plaintiff have such other and further relief as the court may deem just and proper.

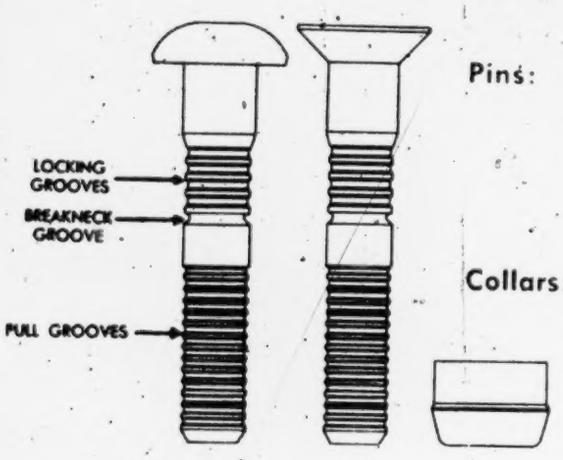
6. That plaintiff recover the costs of this suit.

Dated:

/s/ Charles R. Esherick, /s/ Jack L. Lipson, Attorneys, Department of Justice.

/s/ Robert F. Kennedy, Attorney General. /s/ Lee Loevinger, Assistant Attorney General. /s/ Lewis Bernstein, Attorney, Department of Justice. /s/ Lawrence Gubow, United States Attorney.

Standard Commercial Lockbolt Types



Diameters: 3/16", 1/4", 5/16", 3/8", and 1/2"

Heads: Brazier, round and 90° countersunk heads. Other head types available on special order. Dimensions and specifications for Townsend Lockbolt heads shown on page 5.

Pins:

Materials
Mild Steel
2024-T4 (24S-T4) Aluminum Alloy
6061-T6 (61S-T6) Aluminum Alloy.
Stainless Steel†
Dimensions and specifications for lockbolt pins are shown on pages 4 and 5. Lockbolt pins available in other materials on special order.

Collars:

Materials
Mild Steel, for use with steel lockbolt pins.
6061-T6 (61S-T67) Aluminum Alloy for use with 2024-T4 (24S-T4) aluminum lockbolt pins.
6061 (61S) Aluminum Alloy for use with 6061-T6 (61S-T6) aluminum alloy lockbolt pins.
Stainless Steel†
Dimensions and specifications for lockbolt collars are shown on pages 4 and 5. Lockbolt collars available in other materials on special order.

†*Information on application.*
For application procedures, see page 6.

How They Work

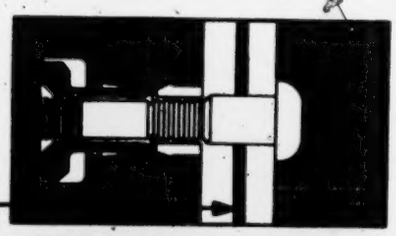


Fig. 1. Note gap between sheets

Fig. 1. The pin is inserted from one side of the work; the locking collar is placed over the projecting lockbolt pin tail; the gun is then applied, and the chuck jaws automatically engage the pull grooves of the projecting pin tail.

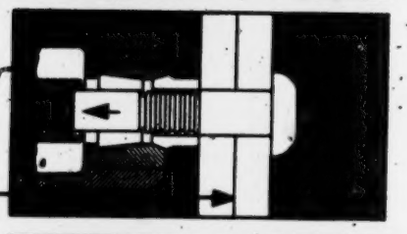


Fig. 2. High clinching action pulls sheets together

Fig. 2. Depressing the gun trigger causes a pull to be exerted on the pin. The reaction of the pull is taken against the collar by the swaging anvil, which draws the work tightly together as in a fitting-up operation.

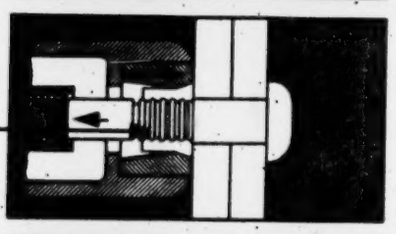


Fig. 3. Collar swaged into grooves

Fig. 3. As the pull on the pin increases, the anvil of the tool is drawn over the collar, swaging the collar into the locking grooves of the pin to form a rigid, permanent lock.

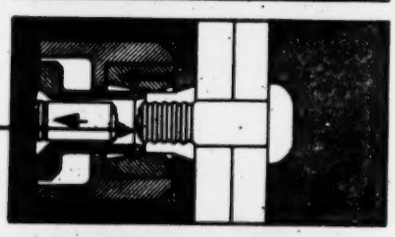


Fig. 4. Pin fractures at breakneck groove

Fig. 4 Continued build-up of force automatically breaks the lockbolt pin in tension at the breakneck groove and the pin tail is automatically ejected.

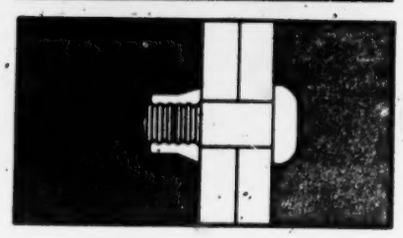
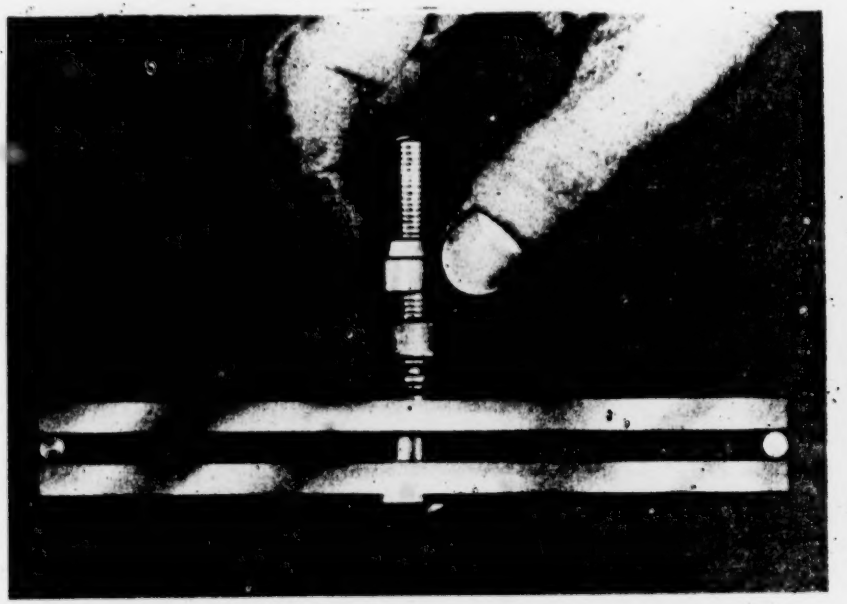
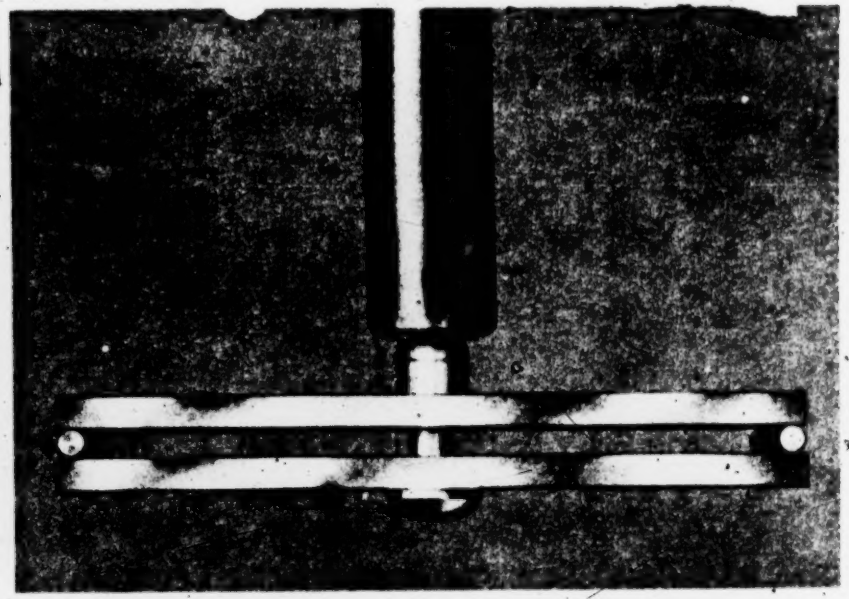


Fig. 5. Installed lockbolt

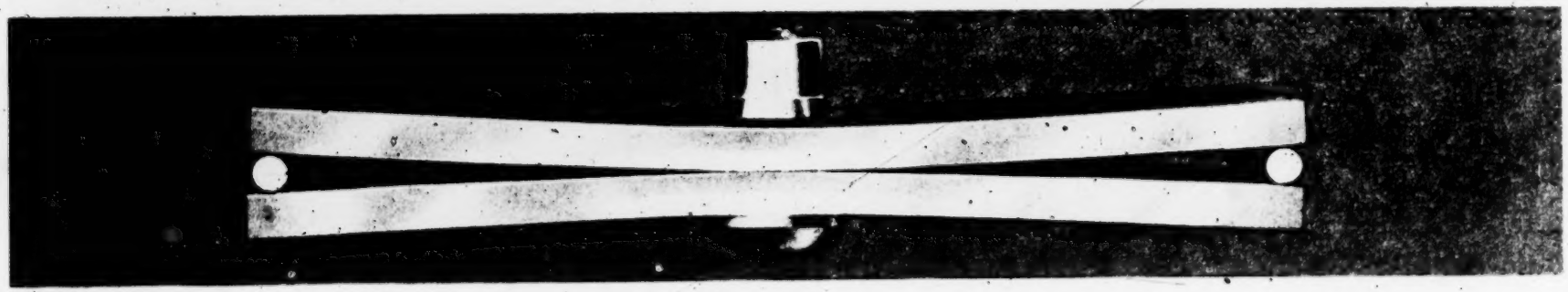
Fig. 5 Sketch shows lockbolt installed as a permanent, secure fastener. Note how collar has been swaged into the locking grooves on the pin.



Here, two 1/4" steel plates, separated by two 7/32" pins are assembled for demonstration with a 3/8" diameter lockbolt.



The nose of the pneumatic pulling gun is slipped over the pin to engage the pulling grooves. Purpose of test is to show high clinch value.



[fol. j] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Civil Action No. 21791

[Title omitted]

ANSWER OF DEFENDANT HUCK MANUFACTUTING COMPANY—Filed April 23, 1962

Huck Manufacturing Company, one of the defendants above named, through its attorneys, makes answer to plaintiff's complaint and avers in support thereof the following:

First Defense

The complaint fails to state a claim against the defendant, Huck Manufacturing Company, upon which relief can be granted.

Second Defense

Defendant, Huck Manufacturing Company, makes its answer to the numbered paragraphs of the complaint filed herein as follows:

1. Defendant admits the allegations of paragraph 1 of the complaint, save and except that defendant denies that it has violated or continues to violate Sections 1 and 2 of the Sherman Act.

[fol. k] 2. Defendant admits that it maintains an office, transacts business and is found within the Eastern District of Michigan.

3. Defendant admits that it is a corporation organized and existing under the laws of the State of Michigan, has its principal place of business in the City of Detroit, Michigan, manufactures lockbolts in its plant located at Detroit, Michigan, and that it is engaged in manufacturing and selling lockbolts in the United States.

4. Answering paragraph 4 of said complaint, this defendant denies that the acts alleged in said complaint to have been done by this defendant were authorized, ordered

or done by the officers, agents, employees or representatives of this defendant while actively engaged in the management, direction and control of this defendant's affairs, save and except for such acts as are in this answer specifically stated or admitted to have been done by this defendant.

5. Defendant denies the allegations of paragraph 5 of the complaint as stated therein. Defendant avers that as understood by defendant the term "lockbolt" includes the term "lockbolt pin" and the term "lockbolt collar" and means a two-part metal fastening device used to permanently join together two or more pieces of metal in the manner illustrated in appendices A and B attached to the complaint; that a lockbolt consists of a metal pin having an enlarged head portion to abut against one of the pieces of metal to be joined, a groved portion in the pin about which the lockbolt collar is swaged, and a grooved pulling portion in the pin which is broken off when the swaging of the collar is completed, as shown in appendices A and B attached to the complaint; that a lockbolt collar is that part of the lock-[fol. 1] bolt consisting of the hollow cylindrical piece of metal designed to slip over the lockbolt pin and be swaged into the grooves of the lockbolt pin as shown in appendices A and B attached to the complaint.

6. Defendant admits the allegations of paragraph 6 of the complaint.

7. Defendant denies the allegations of paragraph 7 of the complaint as stated therein. Defendant admits that the major portion of lockbolts produced by this defendant are designed to meet the standards of the airplane industry. Defendant admits that lockbolts are used by airplane manufacturers in the United States in the construction of jet and propeller driven civilian and military aircraft but avers that lockbolts are a small proportion of the fastening devices used in the construction of each such aircraft. Defendant admits that lockbolts are used in the manufacture and repair of truck trailers, house trailers, railroad cars and ships, including United States naval vessels, and that they are used in other industrial applications, but avers that many types of fasteners other than lockbolts are likewise used.

8. Defendant denies the allegations of paragraph 8 of the complaint as stated therein. Defendant admits that a

lockbolt pin can be made of metal less malleable and therefore more resistant under the same conditions to shear stresses than rivets made of more malleable material. Defendant avers, however, that rivets have been available and in use since long before lockbolts having the shank portions thereof made of relatively non-malleable material capable of resisting shear stresses under like conditions to the same degree as lockbolts. Defendant admits that the lockbolt can be utilized to pull together pieces of metal being [fol. m] joined and eliminate "sheet gap" between such pieces through a substantially greater space than can be accomplished by rivets, and avers that a bolt and nut will serve the same purpose as a lockbolt in this respect. Defendant avers that bolts and nuts that cannot be loosened by either vibration or passage of time have been designed and are and have been available and in use since long before lockbolts.

9. Defendant denies the allegations of paragraph 9 of said complaint as stated therein, and avers that while lockbolts have some advantages over other devices used to join individual pieces of metal, other devices used to join individual pieces of metal have advantages that lockbolts do not have.

10. Defendant denies the allegations of paragraph 10 of said complaint as stated therein. Defendant avers that the aircraft manufacturer has a choice of fastening devices to be used to fasten together the parts of any airplane under design and that whatever fastening devices are chosen, other fastening devices cannot thereafter be readily substituted, and that this hold true regardless of whether a lockbolt is to be substituted for another fastening device originally selected or whether another fastening device is to be substituted for the lockbolt originally selected.

11. Defendant admits the allegations of paragraph 11 of the complaint.

12. Defendant admits the allegations of paragraph 12 of the complaint.

13. Defendant denies the allegations of paragraph 13 of the complaint.

14. Defendant denies the allegations of paragraph 14 of the complaint.

[fols. n-o] 15. Defendant denies the allegations of paragraph 15 of the complaint.

16. Defendant denies the allegations of paragraph 16 of the complaint.

17. Defendant denies the allegations of paragraph 17 of the complaint.

Wherefore, defendant, Huck Manufacturing Company, demands that the complaint be dismissed.

Huck Manufacturing Company, Defendant. By Arthur W. Dickey, Its Attorneys, 7-141 General Motors Building, Detroit 2, Michigan.

Of Counsel for Defendant, Huck Manufacturing Company:

Albert M. Stern per AWD, 2388 First National Building, Detroit 26, Michigan. Harness, Dickey & Pierce, 7-141 General Motors Building, Detroit 2, Michigan.

Certificate of Service (omitted in printing).

[fol. p] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Civil Action No. 21791

[Title omitted]

ANSWER OF DEFENDANT, TOWNSEND COMPANY—Filed April 23, 1962

Townsend Company, one of the defendants above named, through its attorneys, makes answer to the Plaintiff's Complaint herein as follows:

First Defense

The Complaint fails to state a cause of action against the defendant, Townsend Company, upon which relief can be granted.

Second Defense

Defendant, Townsend Company, in answer to the allegations of fact in the numbered paragraphs of the Complaint pleads, insofar as they apply to it, as follows:

1. Admitted, except it is denied that this defendant has violated or continues to violate Sections 1 and 2 of the Sherman Act.

2. Admitted.

3. Admitted, except the allegation that this defendant is a corporation incorporated under the laws of the Commonwealth of Pennsylvania, which is denied. Defendant avers, on the contrary, that it is a corporation incorporated under the laws of the State of Delaware.

[fol. q] 4. The allegations of paragraph 4 of the Complaint are denied as stated. It is admitted, however, that such acts as are stated or admitted in this Answer to have been done by defendant, Townsend Company, were done by the officers, agents, employees or representatives of said defendant while engaged in the course of their employment with said defendant.

5. The allegations contained in paragraph 5 of the Complaint are denied as stated. On the contrary, this defendant avers that, as understood by it and in the fastener industry, the term "lockbolt" means a two-part metal fastening device used to join together permanently two or more pieces of metal in the manner illustrated by Appendices A and B attached to the Complaint; that said two parts are a "lockbolt pin" and a "lockbolt collar"; that a lockbolt pin consists of a metal pin having an enlarged head which abuts against one of the members being joined, a grooved portion about which the lockbolt collar is swaged and a grooved pintail which is gripped, pulled and broken off as the collar is swaged; and that a lockbolt collar consists of a cylindrical piece of metal designed to slip over the lockbolt pin and be swaged onto its grooves. Defendant avers in addition, that throughout its Answer to the Complaint it has taken the term "lockbolt" as used in the Complaint to mean "lockbolt" as defined and described in this paragraph of the Answer, and that the term "lockbolt" as used in this Answer means "lockbolt" as defined and described in this paragraph 5 of the Answer.

6. Admitted.

7. The allegations contained in paragraph 7 of the Complaint are admitted in part and denied in part. Defendant admits that the major portion of lockbolts manufactured by it are designed for use in the airframe manufacturing [fol. r] industry. The remaining allegations of said paragraph 7 are denied as stated. It is admitted, however, that lockbolts are used in the airframe manufacturing industry in production of military and civilian jet and propeller-driven aircraft and in the manufacture and repair of truck-trailers, house-trailers, railroad cars and ships, including United States Naval vessels, and in other industrial applications.

8. The allegations of paragraph 8 of the Complaint are denied as stated. It is admitted that for some purposes the lockbolt may have some advantages over an ordinary rivet or a nut and bolt, such as withstanding shearing actions, elimination of "sheet gap", and avoidance of loosening, but that for other purposes the lockbolt may have some disadvantages when compared to an ordinary rivet or a nut and bolt. It is further averred that the

lockbolt is not the only fastener which has certain advantages over an ordinary rivet or a nut and bolt, and that some fastening devices have some advantages over an ordinary rivet or a nut and bolt which the lockbolt does not have.

9. Denied.

10. Denied.

11. Admitted.

12. Admitted.

13. In answer to the allegation contained in paragraph 13 of the Complaint, defendant states that it is without knowledge or information sufficient to form a belief as to the truth thereof.

14. Denied.

[fol. s] 15. Denied.

16. Denied.

17. Denied.

Wherefore, the defendant, Townsend Company, requests that the Complaint be dismissed as to it.

T. W. Pomeroy, Samuel K. McCune, W. Walter Braham, Jr., Daniel J. Tindall, Jr., Attorneys for Defendant, Townsend Company.

Of Counsel:

Dickenson, Wright, McKean & Cudlip, 800 First National Building, Detroit 26, Michigan. Kirkpatrick, Pomeroy, Lockhart & Johnson, 1130 Oliver Building, Pittsburgh 22, Pennsylvania.

[fol. t] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Civil No. 21-791

[Title omitted]

ORDER PLACING IN EVIDENCE THE ENTIRE RECORD, ETC.—Filed April 2, 1963

The attached Stipulation having been presented, and the Court being fully advised in the premises and after consideration thereof,

It is Hereby Ordered that the same stipulation be and hereby is approved and that the Record of Proceedings in *United States* v. *Huck Manufacturing Company, et al.*, (Criminal Action #39017, E. D. Mich.), is hereby received in evidence in this action subject to all objections appearing therein, and further that such Record constitutes the plaintiff's case-in-chief in this action on which plaintiff rests and further that defendants move on or before April 15, 1963 pursuant to the Federal Rules of Civil Procedure for a dismissal of this action on that Record.

Parties shall file briefs by April 15, 1963. Oral argument shall be held April 22, 1963. Parties shall have the right to file supplementary briefs by May 3, 1963.

/s/ Thaddeus M. Machrowicz, United States District Judge.

[fol. u] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Civil No. 21-791

[Title omitted]

STIPULATION—Filed April 2, 1963

It is hereby stipulated among all parties to this action by their attorneys as follows:

The entire Record in the case of *United States* v. *Huck Manufacturing Company, et al.*, (Criminal Action #39017, E. D. Mich.) is to be placed in evidence in this action subject to all objections appearing therein. Such Record shall constitute the plaintiff's case-in-chief in this action and on which plaintiff will rest. Defendants will move by April 15, 1963 pursuant to the Federal Rules of Civil Procedure for a dismissal of this action on that Record.

Jack L. Lipson, Charles R. Esherick, Attorneys, United States. Date, March 20, 1963.

Arthur W. Dickey, Harness Dickey Pierce, Albert M. Stern, Stern and Rossier, by permission, HWD, Attorneys, Huck Manufacturing Company. Date, April 1st, 1963.

T. W. Pomeroy, Kirkpatrick, Pomeroy, Lockhart & Johnson, Attorneys, Townsend Company. Date, March 21, 1963.

[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Criminal Action No. 39017

THE UNITED STATES OF AMERICA,

vs.

HUCK MANUFACTURING COMPANY, TOWNSEND COMPANY, A. WATSON ARMOUR, III, AND FRED R. DICKENSON, Defendants.

Transcript of Proceedings—February 26, 1963

Proceedings had and testimony taken in the above-entitled cause, before the Hon. Fred W. Kaess, District Judge, and a Jury, at Detroit, Michigan, commencing on Tuesday, February 26, 1963, at 10:45 o'clock A. M.

APPEARANCES:

Jack L. Lipson, Esq., and Charles R. Esherick, Esq., Assistant United States Attorneys, Appearing on behalf of the Government.

James E. Haggerty, Esq., and Arthur W. Dickey, Esq., Appearing on behalf of the Defendants Huck Manufacturing Company and A. Watson Armour, III.

Thomas W. Pomeroy, Esq., Samuel K. McCune, Esq., Ap- [fols. 2-129] pearing on behalf of the Defendants Townsend Company and Fred R. Dickenson. W. Walter Braham, Jr., Esq., co-counsel.

Daniel J. Tindall, Jr., Esq., (Dicksinson, Wright, McKean and Cudlip), of counsel, Appearing on behalf of the Defendants Townsend Company and Fred R. Dickenson.

[fol. 130] ROBERT LOOKER, was thereupon called as a witness herein, and having been first duly sworn, testified as follows:

* * * * * * * *

Direct examination.

By Mr. Lipson:

Q. Will you please state your full name?
A. Robert Looker.
Q. Your address, Mr. Looker?
A. 46 Haldeman Drive, Santa Monica, California.
Q. Is that your residence address or your business address?
[fol. 131] A. Residence address.
Q. What is your business address, Mr. Looker?
A. 111 Main Street, El Segundo, California.
Q. When were you born, Mr. Looker? What year?
A. 1922.
Q. Mr. Looker, may I ask where you received your education?
A. I graduated from the Grosse Pointe High School in Grosse Pointe, Michigan, and also graduated from the United States Naval Academy at Annapolis, Maryland.
Q. Did you receive a degree from that Academy?
A. Yes.
Q. What was it?
A. Bachelor of Science.
Q. What did you do upon graduation from the Academy?
A. I was assigned to the USS Massachusetts.
Q. In what capacity?
A. I was Assistant Division Officer in the Secondary Battery of that ship.
Q. Did that entail any engineering duties?
A. Not specifically, no.
Q. Did any of your naval service entail engineering duties?
A. Yes. At one time, I was Chief Engineer of an LST.
Q. When was that?
A. In 1947.
Q. When did you leave the Navy?
[fol. 132] A. September, 1947.

Q. And what did you do upon leaving the Navy in way of employment?

A. I was employed by Huck Manufacturing Company of Detroit.

Q. Now, I would like to clear something up: Did you have any family relationship with Huck Manufacturing Company?

A. Yes.

Q. What was it?

A. Mr. Louis Charles Huck, the President of Huck Manufacturing Company at the time, was my stepfather.

Q. Do you have any current relationship to that company?

A. No.

Q. Does any member of your family have any current relationship with that company?

A. You are speaking of relationship with the principal owners of the company?

Q. No, with Huck Manufacturing Company, itself.

A. No.

Q. Mr. Looker, have you been served with a subpoena to testify at this trial?

A. Yes.

Q. Mr. Looker, you know me; don't you?

A. Yes.

Q. Do you know any other members of the Department of Justice in connection with this case?

[fol. 133] A. Yes.

Q. Have you spoken with any other members of the Department of Justice in connection with this case?

A. Yes.

Q. Do you know Mr. Esherick?

A. I do.

Q. Do you know a Mr. Hollander?

A. Yes.

Q. In connection with this case?

A. Yes.

Q. Have you spoken with any other members of the Department of Justice in connection with this case?

A. Yes. I spoke with a gentleman in Washington in 1958, and two assistants and I don't recall any of their names.

Q. Would it refresh your recollection if I mentioned Mr. Beckler (?)?

A. Yes, it would. That was one of the gentlemen.

Q. Have you ever had any correspondence with the Department of Justice in connection with this case?

A. Yes, I have.

Q. Do you remember the persons with whom you corresponded?

A. I had corresponded with yourself, Mr. Esherick, and Mr. Beckler, Mr. Hollander, Mr. Bicks, Mr. Loevinger, whom I have not met, and I believe that is all.

Q. Thank you. When you joined Huck Manufacturing [fol. 134] Company, in what capacity were you employed?

A. I was a clerk in the sales office of that company.

Q. How long did you remain a clerk?

A. For about a two, two and a half year period.

Q. What position did you move to after your clerkship was finished?

A. I was made Manager of Technical Publications.

Q. And when was that? What year, approximately?

A. I would say early 1952.

Q. What position did you have after that?

A. I was made Sales Manager.

Q. How long did you hold that position?

A. Until May of 1954.

Q. And what position did you take then?

A. I was elected Vice President in Charge of Sales.

Q. And how long did you remain Vice President?

A. For about a two-year period.

Q. When did you leave Huck Manufacturing Company?

A. In August of 1956.

Q. Have you ever returned to Huck Manufacturing after that date?

A. To visit?

Q. No, as an employee?

A. No, I have not.

Q. What company did you become associated with upon leaving Huck?

[fol. 135] A. Brown-Line Corporation.

Q. Is that the same company you have mentioned earlier?

A. Yes, it is.

Q. I would like to go back to your duties as a clerk. What were they?

A. I was responsible to the Vice President in Charge of Sales for the keeping of clerical records having to do with the detailed activities of the sales personnel, and to some extent, the detailed sales of our company's products to its customers.

Q. To whom did you report as a clerk?

A. At first, to Mr. Robert Hendrickson, and then, to Mr. Frank A. Dobbs.

Q. Now, in your position as Manager of Technical Publications, what were your duties?

A. Essentially as before, plus the additional responsibility of publishing the company's sales and engineering literature.

Q. What kind of engineering literature do you have reference to?

A. Drawings describing the company's products; dimensional specifications of the products, such that their use was facilitated by our customers.

Q. What kind of sales literature did you have reference to?

A. One to four page brochures, things of that nature.

Q. Describing what?

[fol. 136] A. Describing the company's products and their application.

Q. What were your duties as Sales Manager for Huck?

A. I was responsible to the Vice President in Charge of Sales, for supervision of the company sales personnel under his direction, and to some extent of making sales for the company in association with the company sales personnel.

Q. Who was that person to whom you were responsible?

A. Frank A. Dobbs.

Q. And what title did he have?

A. Vice President in Charge of Sales.

Q. When did you, yourself, become Vice President in Charge of Sales?

A. In May, 1954.

Q. Will you describe the duties that you had in that position?

A. Well, I was responsible to the company's President for the sales of the company.

Q. How many people in the company were over you? To whom did you report?

A. I reported to a Mr. Alfred E. Benkert.

Q. And what position did he hold?

A. He was Executive Vice President.

Q. And was there one over Mr. Benkert?

A. Yes, Mr. A. Watson Armour, the III.

Q. Is Mr. Armour in the Courtroom?

A. Yes, he is.

[fol. 137] Q. Would you point to him, please?

A. (Witness complies.)

Q. Thank you. Who is charged with the administration of Huck's Sales Department?

A. During the period which I——

Q. (Interposing): During the period when you were employed at Huck, yes.

A. When I was Vice President in Charge of Sales, I was. Before that time, Mr. Frank A. Dobbs was and before that time, Mr. Robert Hendrickson was.

Q. Did you have anything to do with Huck's patent matters?

A. Yes, I did.

Q. Would you describe the nature of your duties in connection with Huck's patent matters?

A. Well, before the death of the company's President, Louis Huck, I worked with him in matters relating to patents, including the prosecution of patents, the planning of patent policy and the execution of whatever patent matters were necessary for the benefit of the company.

Q. Did these duties continue after Mr. Huck died, or did they terminate?

A. They continued after Mr. Huck's death, yes.

Q. Under whose direction?

A. Under the direction of Mr. Armour, the company's President.

Q. Mr. Looker, who, in Huck Manufacturing Company, decided what products Huck would make?

[fol. 138] Mr. Haggerty: I object to it unless the time is fixed.

The Court: Sustained.

Q. (By Mr. Lipson, continuing): During your period as Vice President in Charge of Sales?

A. There was a committee established, made up of, seems to me, about ten or twelve people of which I was a part.

The committee's responsibility—the committee was assigned the responsibility of deciding whether or not a proposed product would be manufactured and sold.

The Court: Then there was a committee that was created; is that correct?

A. That is correct, yes, sir.

Q. (By Mr. Lipson, continuing): Did the committee make the final determination on these questions?

A. Yes.

Q. Did anyone chair that committee?

A. I don't recall.

Q. Did anyone direct the activities of that committee?

A. I have to only assume so. I don't recall that they did or not.

Q. Do you recall any of the members of that committee?

A. Yes.

Q. Who are they?

[fol. 139] A. I was one of them. Mr. Brillmyer was one, the company's Vice President in Charge of Research. Mr. Pelletier was on the committee.

The Court: What other position did Mr. Pelletier have?

A. Beg pardon?

The Court: What other position did Mr. Pelletier have?

A. Mr. Pelletier was in charge of pricing the company's products.

Mr. Vanheck was on it.

The Court: And his position?

A. He was Chief Engineer of the company, Vice President and Chief Engineer. And it seems to me there were three or four others, but I don't recall who they were.

Q. (By Mr. Lipson, continuing): Do you recall whether Mr. Armour had anything to do with this committee?

A. I believe he established the committee.

Q. Mr. Looker, as Vice President in Charge of Sales, how many people did you supervise?

A. About twenty-five.

Q. Where were they located; would you say?

A. Well, there were about seven or eight of them in

Detroit, including the office staff, and we had sales representatives assigned from Boston to Los Angeles.

Q. Would you name some of the states in which they [fol. 140] are—or were located?

A. Yes. There was a representative in Massachusetts, in Pennsylvania, in New York, in Georgia, Michigan, Illinois, Ohio, Missouri, Texas, Washington, California, Minnesota, Louisiana. That's as far as my memory carries me.

Q. Thank you. Do you recall the circumstances under which you left the employ of Huck Manufacturing Company?

A. Yes, I do.

Q. What were those circumstances?

A. I resigned my position as Vice President in Charge of Sales.

Q. Was this a voluntary or involuntary act?

A. It was a voluntary act.

Q. Did the resignation come before—strike that. When was your resignation accepted?

A. About a week after I turned it in. It seems to me it was some time in early July of 1956.

Q. Was there a period between that time and the time you actually left the company?

A. Yes. I stayed with the company, in its employ, for about a five or six-week period after that.

Q. Would you explain how, how come you remained in the employ after your resignation?

A. Well, I—

Mr. Haggerty (Interposing): Object to it as incompetent, irrelevant and immaterial. It may be preliminary, but it [fol. 141] is totally irrelevant and immaterial.

Mr. Lipson: Your Honor, Mr. Looker's association with the Huck Manufacturing Company is the very core of this case, and I would like to get it on the record.

The Court: Objection overruled. You may continue.

Q. (By Mr. Lipson, continuing): Would you answer the question, please, Mr. Looker?

A. Yes. I had been writing for about a two-year period a so-called master sales document entitled "General Information Bulletin", and I had it just about finished by the

time I decided to leave the employ of the company. It had about a month's work left on it, as far as I was concerned, and the company kept me on after I resigned, for the purpose of completing that document.

Q. During the entire course of time when you were employed by Huck Manufacturing Company, was Mr. A. Watson Armour, the III employed by that company?

A. Yes.

Q. Would you tell us the positions he held with the company from 1947, until the time that you left the company?

A. He was Chairman of the Board for the entire period. He was—

The Court: When you say "the entire period", you mean 1947——

A. (Interrupting): 1947 through 1956. He was, I believe, [fol. 142] Executive Vice President up until the time of Mr. Huck's death in 1952. At that time, he was elected President of the company and remained President until the period that I left the company.

Q. (By Mr. Lipson, continuing): Would you tell the Jury what business Huck Manufacturing Company is in?

A. Yes. Huck—Huck Manufacturing Company is in the business of manufacturing and selling a very specialized line of fastening devices and their installation equipment.

Q. Would you give us the names of those devices?

A. Yes. The products of the company are divided into three groups. One is called a blind rivet, made in several types—several different types and styles; secondly, the lock bolt is the other major product; and the third major product are the installation tools for the assembly and installation of the other two products. So, there are two fastening devices and one line of tools that were the company's products during my period of employment.

Q. During the period of time you were employed in the Sales Department, both before you were Vice President in Charge of Sales, and after that time, to what extent, if any, were you concerned with lock bolt sales?

A. I was greatly concerned with lock bolt sales.

Q. Could you give us an estimate of the proportion of

the time that you spent on lock bolt sales, as compared to [fol. 143] the other devices that you mentioned?

A. It would be very difficult for me to do so.

Q. Was it more or less half of your time?

A. Approximately.

Q. Have you ever seen lock bolts?

A. Yes.

Q. How many times?

A. Oh, probably two or three thousand.

Q. Have you ever seen them actually made?

A. I have seen them manufactured, yes.

Q. Where?

A. At the Huck Company's factory on Bellevue in this city.

Q. Have you ever seen them installed?

A. I have, yes.

Q. Where have you seen them installed?

A. At the Huck Company in Detroit, and probably a hundred or two hundred of its customers' factories.

Q. Where would they be located? Can you name one or two of those factories where you saw them installed?

A. The Douglas Aircraft Company in Santa Monica, California; Lockheed in Burbank, California; the Boeing Company in Seattle, and so forth.

Q. I think that will suffice. Mr. Looker, in connection with your subpoena, were you required to bring any sketches with you?

[fol. 144] A. Yes.

Q. Do you have such sketches with you?

A. I do.

Q. Would you get them, please?

A. Yes. (Witness complies.)

Mr. Lipson: Would you mark this? Would the Reporter mark these as exhibits for the Government?

(Thereupon three drawings were marked for identification as Government Exhibits 1, 2, and 3, respectively, by the Court Reporter.)

Q. (By Mr. Lipson, continuing): Mr. Looker, I will show you Government Exhibits 1, 2, and 3, and ask you who prepared those exhibits.

A. I did.

Q. When did you prepare those exhibits?
A. Yesterday.

The Court: When? Yesterday?

A. Yesterday.

Mr. Lipson: I show these documents to counsel for the defendants.

Mr. Pomeroy: Do you have any copies of them?

Mr. Lipson: No, I am afraid not.

Mr. Pomeroy: May we have your Honor's indulgence to look at these?

[fol. 145] The Court: All right. I take it that these three exhibits are aids or in the nature of charts for your assistance in describing the lock bolt, itself, and not intended to be according to scale or anything of that sort? Merely for aiding and assisting the Jury in understanding what you are describing; is that it?

A. Yes, sir.

The Court: And not necessarily technically correct as to dimensions and things of that kind?

A. Yes, sir.

The Court: All right.

Mr. Dickey: If your Honor please, for the defendants Huck and Armour——

The Court: A little louder, please.

Mr. Dickey: I say, the Defendants Buck and Armour have no objection to these exhibits, identified as 1, 2, and 3, with this qualification: They are obviously somewhat crude drawings, not to scale, and may not accurately represent in some detail the lock bolts which they are apparently intended to illustrate.

As exhibits which are illustrative, in that qualified sense, we have no objection to their admission.

The Court: With that understanding, and maybe you didn't hear me, I asked if that were the purpose.

Mr. Dickey: Oh, you did?

The Court: For that purpose, and for that purpose only, [fol. 146] they may be admitted. I assume—any further objection? Any other objection?

Mr. Pomeroy: I have no objection, subject to the same qualification.

The Court: All right.

Mr. Pomeroy: They haven't been offered yet, I think, however.

The Court: All right.

Mr. Dickey: May we obtain copies of these?

Mr. Lipson: We will have to use them, and these are the only ones.

Mr. Dickey: Do you propose to make copies of those, so we can have them, or may we take them and have copies made of them?

Mr. Lipson: We can work that out, I am sure.

Mr. Dickey: All right.

Q. (By Mr. Lipson, continuing): Mr. Looker, are you familiar with the operation of a lock bolt device?

A. Yes, I am.

Q. Mr. Looker, using these charts, where necessary, would you explain to the Jury what a lock bolt physically is and how it operates?

The Court: Are you offering the exhibits, or do you want to wait? Go ahead.

Mr. Lipson: Well, I would like to have him use the [fol. 147] exhibits merely as you said, your Honor, as illustrative of his testimony.

The Court: All right.

A. Yes.

The Court: I doubt if they can be seen from there. We would prefer——

Mr. Haggerty (Interposing): Defense counsel would have to have a periscope, your Honor, to see over that.

The Court: I think it would be better just to stand in front of the Court Reporter here and hold them up, because we don't have anything that would be of assistance.

Mr. Lipson: May the witness get off the witness stand for this purpose, your Honor?

The Court: Yes, certainly. Can't you do better than that board, Mr. Locker?

Mr. Esherick: If your Honor please, I will hold them up for the witness while he is explaining what they are.

The Court: Yes. You will be a good ——

Mr. Esherick (Interposing): I'm a good dummy, your Honor.

The Court: Yes, but I didn't say that.

A. Can the Jury see?

A Juror: Yes, I can

A. The lock belt is a two-part fastening device, not unlike [fol. 148] a nut and a bolt combination. It is used essentially for the same purpose, to fasten together, generally, metal structure.

The lock bolt pin is the bolt complement, and the lock bolt collar is the nut complement. During the installation cycle, the lock bolt collar is deformed or squeezed onto the threads of the lock bolt pin, such as to form a permanent lock between the two elements. The installation cycle permits this to be done very rapidly, and in a manner which is relatively unique in fastening devices.

The lock bolt pin, this is the metal element with a head on one end, and a cylindrical shank, which is the portion of the pin which fits the hole, into which the fastener is installed.

This group of threads you see here, marked No. 3, corresponds to the threads on a bolt, except that they have no lead angle. They are merely annular grooves.

The very deep groove you see, marked No. 6, is a groove that is provided on the lock bolt pin to permit this section, marked No. 4, to be broken off from the major section during the driving cycle. The grooves on the pintail section, so to speak, marked No. 4, are provided so that the driving tool can grab or grasp the pin during this installation cycle.

I will explain how the installation cycle works next.

[fol. 149] The collar, itself, is a supple tubular element having in this case, a bead on one end, and a bore through its center. The bore is approximately the same size as the outside diameter of the threaded portion.

Both elements are generally made of metal. For aircraft structure, the pin is made out of a heat treated alloy steel and the collar is generally of deformable aluminum, or it can be of a deformable steel. I think that is all with No. 1.

Mr. Pomeroy: Excuse me. Was that Exhibit No. 1 you were just testifying from?

A. Yes.

Mr. Lipson: Let the record show that Exhibit No. 2 is now being held up.

A. Exhibit No. 2 shows several things in the sequence of lock bolt installation. It shows first that there are two metal plates, as I have shown here marked No. 6, with a hole provided in the plates.

The pin is inserted through that hole from one side of the work, and the collar, marked No. 3, is applied over the extending pintail.

The sheets, as you see in No. 6, can have a substantial gap in them, as the lock bolt performs the function of pulling out a sheet gap.

The pin, as you see here in the hole, doesn't go all [fol. 150] the way into the hole, because the lockbolt has the facility of pulling itself into a hole through an interference fit, providing a very tight joint. This is one of the major features of the lock bolt, as I will explain later.

At No. 4, you will see a device which is intended to represent the chuck jaw portion of the driving tool which grabs onto the pintail section of the lock bolt.

The illustration at No. 5 is the swaging anvil section of the lock bolt nose assembly, driving tool section.

Now, the installation goes something like this: The lock bolt pin, No. 1, is inserted through the hole, No. 2. The collar, No. 3, is applied over the extending pintail, and the tool, including elements 4 and 5, is applied over the extending pintail, as well.

The tool is then actuated. By that, I mean a trigger is pulled and generally, air pressure will cause this tool to pull back on the pin through the chuck jaws at No. 4, and push on the swaging anvil at No. 5. This force causes the pin to be pulled into the hole through an interference fit, if that is required, and it causes the sheets to be pulled together, tightly in intimate contact. It further causes the swaging anvil, No. 5, to ride down over Collar No. 3, squeezing it into the grooves shown on Pin No. 1.

[fol. 151] If I can see Exhibit No. 3, I will show you the finish of it.

Mr. Lipson: Let the record show that Exhibit No. 3 is now being held up.

Exhibit 3 shows what happens just after the lock bolt has been installed. The anvil has moved down over the collar, squeezing the collar material into the annular grooves provided on the pin, shown at 5.

The sheets have been pulled tightly together; the shank of the pin has been pulled into the hole through interference fit; and the pintail has been broken off at No. 6. Now, this sketch would be complete if the anvil had been removed, which it does automatically at the conclusion of the driving cycle. This whole thing takes about a second to accomplish.

The resultant attachment is one having a pin with a very high shear strength, comparatively, installed in a very tight, close-fit hole, having pulled the sheets together very tightly and locked them together permanently, in a manner which can't be loosened except by destroying the fastening device itself.

The pintail, as shown at—with the jaws—at 3, is then ejected from the end of the driving tool and is no longer used. It is merely an activating device.

The completed lock bolt is the section shown at the left [fol. 152] of the exhibit, less the anvil marked No. 4.

Mr. Lipson: Thank you, Mr. Looker.

Q. (By Mr. Lipson, continuing): Do you have in your possession at this time any simple lock bolts, themselves?

A. Yes.

Q. Would you produce them, please?

A. Yes. (Witness complies.)

Mr. Lipson: Will you identify these, please?

(Thereupon two lock bolts with collars were marked for identification as Government Exhibits 4 and 5, respectively, by the Court Reporter.)

Mr. Lipson: I would like to show Exhibits 4 and 5 to defense counsel, for observation and possible objection.

Q. (By Mr. Lipson, continuing): Mr. Looker, I show you Government Exhibits 4 and 5, and ask you whether or not they are representative samples of lock bolts such as you have encountered in your work with Huck Manufacturing Company?

A. Yes, they are.

Q. With respect to Government Exhibit No. 4, would you show, by holding it up, the collar portion of the lock bolt as you have previously described it?

Mr. Haggerty: Just a moment. You haven't offered these in evidence yet and they haven't been received. I think we had better object——.

[fol. 153] OFFERS IN EVIDENCE

Mr. Lipson (Interposing): Your Honor, I offer these now as representative samples of lock bolts, as testified to by the witness.

The Court: Four and 5 you are talking about?

Mr. Lipson: Four and 5, your Honor.

The Court: Any objection?

Mr. Dickey: We have no objection to them as representative samples of some sizes and types, but they are not—they are not representative of all sizes and types.

The Court: Mr. Pomeroy?

Mr. Pomeroy: I would accept Mr. Dickey's statement on that, your Honor.

The Court: They may be received as samples.

Q. (By Mr. Lipson, continuing): I will show you Government Exhibit No. 4 and ask you to point or hold up the collar portion of the lock bolt, previously described?

A. (Witness complies.)

Q. I ask you to point to the head portion of the lock bolt, previously described.

A. (Witness complies.)

Q. Now, which of the—which is the pintail portion of the lock bolt? Would you point to that section?

A. (Witness complies.)

Q. And would you point to the break neck groove you previously mentioned?

[fol. 154] A. (Witness complies.)

Q. Would you please point to the annular grooves that were previously mentioned?

A. (Witness complies.)

Q. Thank you, Mr. Looker. I show you Government Exhibit No. 5 and ask you in what respect, if any, Government Exhibit No. 5 differs from No. 4. Do you still want to hold No. 4 for purposes of comparison?

A. Yes. Exhibit No. 5 is similar to No. 4, except that it is made of a heat treated alloy steel material. That is, the pin is, and the pin has a pin head or protruding head style, whereas Exhibit No. 4 has a flush or countersunk head. Other than that, they are representative samples of similar nature.

Q. Mr. Looker, may I ask what you—you mentioned—strike that.

Previously, you had mentioned something as to an aircraft lock bolt. Are they aircraft lock bolts or some other type of lock bolt?

A. I will have to look.

Q. What are you looking at? Will you explain it to the Jury, please?

A. I am looking at the countersunk head section of the exhibit marked No. 4. I know that exhibit marked No. 5, the lock bolt pin is an aircraft product. I am not certain [fols. 155-158] about the collar.

Exhibit No. 4 is also an aircraft lock bolt, that is manufactured for the purpose of sale to the airframe industry.

Q. May I ask you how you can identify one as an aircraft lock bolt as opposed to any other type?

A. Yes. The exhibit marked No. 4 is an aluminum lock bolt pin, which, when made for aircraft, has a 100 degree countersunk head. When made for other than aircraft use, the head is 90 degrees and it is easily discernible to a relatively-trained eye.

The exhibit marked No. 5, by the cross on the top of the head and by the head shape, is identifiable as a pin head, heat treated alloy steel aircraft type lock bolt pin.

Q. Thank you, Mr. Looker.

* * * * * * *

[fol. 159] OFFERS IN EVIDENCE

Mr. Lipson: Your Honor, prior to resuming questioning of Mr. Looker, I would like the record to move into—to offer the Government's Exhibits 1, 2 and 3, the sketches Mr. Looker testified from yesterday, for the purposes noted by your Honor.

Mr. Haggerty: I think they have been received.

The Court: No, he never formally offered them.

Mr. Haggerty: Yes.

The Court: But I made inquiry of yourself and there was no objection.

Mr. Haggerty: No objection.

The Court: For the purpose for which they are offered, and they may be received.

Mr. Lipson: Thank you, your Honor.

Direct examination. (Continued)

By Mr. Lipson:

Q. Mr. Looker, you understand that the oath took yesterday is binding on you?

A. Yes.

[fol. 160] Q. While you are on the stand?

A. Yes.

Q. Mr. Looker, yesterday you were in the process of describing to us the lockbolt mechanism and how it functions.

Mr. Lipson: I would like to make available for inspection to the defendants at this time, the Exhibits 6 and 7 which we previously had marked prior to the opening of Court this morning, for examination.

Q. (By Mr. Lipson) Mr. Looker, I show you Government's Exhibits marked 6 and 7, and ask you if you can identify what those exhibits are?

A. Government's Exhibit 6 consists of two aluminum plates which have been separated by aluminum spaces and attached together with a piece of tape on either end, there being a hole having been formed in the center of the section.

Q. And Government's Exhibit 7?

A. Government's Exhibit 7 consists of a similar structure, with a lockbolt attached in the center of the plates, showing the lockbolt in an installed condition, having pulled the plates together.

Q. Is there any relationship between 6 and 7, Mr. Looker?

A. Government's Exhibit 6 appears to be the type of demonstration plate that we used during my employment with the Huck Company, for showing the installation and pull together characteristics of the lockbolt itself. While

[fol. 161] Exhibit 7 shows the similar type plate, after installation.

Q. Thank you, Mr. Looker.

Mr. Lipson: Your Honor, at this time, I would like to offer as evidence, Government's Exhibits 6 and 7.

Mr. Dickey: No objection. It is my understanding that those exhibits are offered merely for illustration purposes.

The Court: That is true. Is that correct, counsel?

Mr. Lipson: That is correct, your Honor, to show the jury what a lockbolt looks like when installed.

The Court: Fine.

Any other objection?

Mr. Pomeroy: No objection, your Honor.

The Court: All right, it may be received.

Mr. Lipson: Thank you, your Honor.

Q. (By Mr. Lipson) Mr. Looker, one question about Government's Exhibit No. 7 before we proceed further in your examination.

What happened to the remainder of the lockbolt after it was set?

A. The extending pin tail would have been broken off and discarded in the normal lockbolt driving operation.

Q. Thank you.

Mr. Lipson: Your Honor, prior to opening Court this morning, the Government had marked for identification [fol. 162] a series of exhibits, 8, 9, 10, 11, 12 and 13; 14, 15 and 16. I now show Exhibits through 13—that is, 8 through 13 to defendants for examination.

Q. (By Mr. Lipson) Mr. Looker, I now show you Government's Exhibit No. 8, and ask you if you can identify what this picture purports to show?

A. Exhibit 8 appears to be a relatively typical lockbolt installation, showing lockbolts after installation and with the pin tails extending prior to installation. Such as you might find in an aircraft spar.

Q. You didn't take this actual picture, did you, Mr. Looker?

A. No. I did not.

Q. I show you Government's Exhibit No. 9, Mr. Looker. Can you identify that exhibit?

A. Exhibit 9 appears to be a photograph showing lockbolts in process of installation, with the pneumatic driving tool, apparently in process of installing a lockbolt.

Next to it, an extending pin tail of the second lockbolt ready for installation, and below it, installed lockbolt collars.

Q. I show you Government's Exhibit No. 10, Mr. Looker. Can you identify that exhibit?

A. Government's Exhibit No. 10 shows a lower roll of installed shear type aircraft lockbolts, with an upper roll of extending lockbolt pin tails and the man is shown placing [fol. 163] a shear lockbolt collar over what is an extending pin tail.

Q. Thank you, Mr. Looker. I show you Government's Exhibit No. 11, and ask you if you can identify that exhibit?

A. Government's Exhibit No. 11 shows another lockbolt in the process of driving the pneumatic tool having been applied to the extending pin tail. It appears that the lockbolt is apparently ready for installation at this time, or has just been installed, one or the other.

Q. Thank you. I show you Government's Exhibit No. 12, and ask you if you can identify that exhibit?

A. Government's Exhibit No. 12 shows what would appear to me to be a piece of aircraft structure, with a lockbolt pull tool on one side, and I can't make out what is on the other side.

Q. Thank you, Mr. Looker. And I show you, finally, Government's Exhibit No. 13, and ask you if you can identify what 13 represents?

A. 13 looks like a worker installing lockbolts on a spar cap; looks like a piece of aircraft structure, and this looks like a spar cap to me.

Q. Mr. Looker, while you were employed by the Huck Manufacturing Company, did you ever have occasion to deliver any lectures with respect to lockbolts and lockbolt installations at conventions?

A. I have, yes.

Q. On what occasions?

[fol. 164] A. On one occasion I delivered lectures to the Engineering Department of the Grumman Aircraft Engineering Company at Bethpage, Long Island, and on another occasion I delivered a lecture on lockbolts and bind rivet devices to a truck-trailer convention in Cincinnati, Ohio.

Those were the large audience lectures I recall at this time having delivered.

Q. Whom did you represent at those lectures?

A. Huck Manfacturing Company.

Q. Was that part of your duty?

A. Yes.

Mr. Lipson: Your Honor, at this time, the Government offers into evidence the exhibits previously identified by Mr. Looker as 8 through and including 13.

(Handing exhibits to counsel.)

Mr. Lipson: Your Honor, there being no objection—I hear no objection.

Mr. Dickey: Well, wait a minute. I take it that these are photographs that were not taken by the witness?

Mr. Lipson: I think we established that.

Mr. Dickey: Well, all right. And that he didn't see them taken, that he wasn't present where they were taken, and that they are illustrative, merely of the way of installing the lockbolt.

Mr. Lipson: They are offered for that purpose.

[fol. 165] Mr. Dickey: And there is no evidence here that it is a photograph of an actual operation that is on some aircraft or product that was in the course of manufacture during this installation.

The Court: The witness testified that it apparently was.

Mr. Lipson: Yes, Mr. Dickey, it is exactly what Mr. Looker did testify to.

Mr. Dickey: Well, Mr. Looker wasn't present. My point is this, I have no objection to their admission as illustrative of an installation of a lockbolt. I just want to get them characterized that way. That it is no operation that this witness either saw or carried on himself. He is testifying from his knowledge or memory or familiarity with the installation of lockbolts.

The Court: It is received for that purpose alone.

Mr. Lipson: Your Honor, if there exists any problem at all with respect to the authenticity of the device—the photographs that we are referring to, we have in the court room, the actual photographer, and we are ready and willing to put him on the stand to testify to that, and since

Mr. Dickey does have these reservations, we reserve our right to put the photographer on the stand.

The Court: All right. They may be received at the moment, subject to—for the purposes indicated.

[fol. 166] Mr. Lipson: Thank you, your Honor.

Your Honor, because of the nature of the product involved, it sometimes appeared to me to be confusing personally until I was able to see a photographic reproduction or an actual reproduction.

The Court: I have no objections to the way you are proceeding.

Mr. Lipson: Can I, with your permission, show these photographs to the members of the jury at this time for purposes of understanding what has already been testified to by Mr. Looker, and for the remainder of Mr. Looker's testimony?

The Court: Any objection?

Mr. Dickey: No objection.

The Court: Start them all down——

Mr. Lipson: (Interposing) Just start at one end, I suppose. They are in reverse order, let me straighten out the order for you.

(Whereupon, the exhibits were handed to the jury.)

Mr. Lipson: Your Honor, with the Court's permission, as long as the jury is, at this time, viewing the photographs, would it be an appropriate time to have them look at the other exhibits of tangible evidence already introduced?

The Court: They may have them.

Mr. Lipson: Thank you, your Honor. Let the record [fol. 167] show that I am showing four—Government's Exhibits 4 and 5 to the jury.

(Whereupon, the exhibits were handed to the jury.)

[fol. 168] The Court: I believe we're ready; aren't we?

Mr. Lipson: I believe 6 and 7 are still being viewed by the Jury, your Honor.

Thank you.

Q. (By Mr. Lipson, continuing): Mr. Looker, how many men are required to install a lockbolt?

A. Either one or two.

Q. Would you describe how a one-man operation works?

A. Yes. The pins are put in from one side of the work and then, the man either reaches around or travels around to the outside of the work and drives the collars from the extending pintail side.

Q. How does this differ from a two-man operation?

A. In a two-man operation, the man puts the pins in from one side and the man on the opposite side applies the collars to the extending pintail, and the driving tool performs the driving operation from the second side of the work.

Q. Were you concerned with these installation tools while you were with Huck?

A. Yes.

Q. In what capacity?

A. Capacity to insure an adequate supply and that they functioned properly for the benefit of the sale of the company's product.

Q. Do you know the estimated cost of these installation tools?

[fol. 169] A. Well, they vary from around $300 to about eight hundred.

Q. Who manufactures the installation tools?

A. Well, there are a series of them that are manufactured by the Chicago Pneumatic Tool Company of New York City, and some are manufactured by the Townsend Company, and some are manufactured by the Huck Manufacturing Company.

Q. At the time you left your employ with Huck Manufacturing Company, who were the manufacturers of these tools?

A. The Chicago Pneumatic Tool Company and the Huck Manufacturing Company.

Q. Mr. Looker, what is the difference between a commercial lockbolt and an aircraft lockbolt? Would you explain that to the Jury, please?

A. Yes. The commercial lockbolt is in all practical or appearance sake identical to the aircraft lockbolt, except that it is manufactured for other than use in aircraft application. Some of the differences are it is manufactured of a generally lower strength and lower cost material.

Q. Is there any difference in price between an aircraft lockbolt and a commercial lockbolt?

A. Yes.

Q. What is that difference?

A. Very substantial difference between the two.

Q. Where would the difference lie, in which direction?

[fol. 170] A. The aircraft lockbolt, to the best of my memory, is about twice the cost of a commercial lockbolt for a comparable size and diameter.

Q. Mr. Looker, what firms manufacture lockbolts?

A. What——

Q. (Interposing): What companies?

A. What companies?

Q. What corporations?

A. Huck Manufacturing Company and the Townsend Company.

Q. While you were vice-president in charge of sales at Huck Manufacturing Company, did you have any way of determining what share of the lockbolt market Huck had as to what share of the lockbolt market Townsend Company may have had?

A. Roughtly, yes.

Q. What was the basis for you ability to make this determination? On what did you——

A. (Interrupting): My determinations were made on royalty statements from the Townsend Company to the Huck Company.

Q. Do you recall the comparable shares of the market held by each company?

Mr. Haggerty: Well, I object to it, unless we specify a time now.

Mr. Lipson: I asked at that time while he was vice-president.

Mr. Haggerty: Well, I don't mean "at that time." [fol. 171] I mean for what years now.

The Court: From the beginning——

Q. (By Mr. Lipson, continuing and interposing): The period through 1954 through 1956?

A. 1954, there was almost negligible Townsend sales. In 1955—I am not certain of 1955. When I left, it seemed to me that the ——

The Court: Wait a minute.

Mr. Haggerty: I object to what it seemed——

A. (Interrupting): In September.

Mr. Haggerty: Just a moment.

A. Oh.

Mr. Haggerty: I object to what it seemed to him or his imagination.

A. I can't testify to the sales.

Q. (By Mr. Lipson, continuing): Mr. Looker, are you testifying from your recollection or——

A. (Interrupting): Yes. I can't testify to any knowledge or recollection of the Townsend participation in the lockbolt market in 1955. However, at the time I left the Huck Company in September or August of 1956, my recollection is that the Townsend Company enjoyed between 10 and 15 per cent of the total market for lockbolt sales.

Q. And the remainder, I take it from your earlier testimony, was Huck's?

[fol. 172] A. That is correct, yes.

Q. What industry was the primary customer for lockbolts?

A. The airframe industry.

Q. What other industry bought and used lockbolts?

A. The largest other single user were—was the industry that was engaged in the manufacture of truck trailers and truck bodies, if you consider that to be one industry.

Q. Were there any other construction industries, construction-type industries that used lockbolts?

A. By construction, do you mean building construction or fabrication of parts?

Q. Fabrication?

A. Fabrication. The bus industry, to some extent, utilized lockbolts. The railroad industry, to some extent, utilized lockbolts in the construction of passenger cars, and during the latter part of my employment in the construction of freight cars, to some extent.

Q. Mr. Looker, do you have any recollection of the names of the individual customer companies, some of the more prominent customer companies?

A. Aircraft or commercial, or both?

Q. In both fields?

A. The prominent aircraft customers were the Republic Aircraft Company, the Lockheed Aircraft Company, Doug-

las Aircraft Company, Boeing Airplane Company, Con-
[fol. 173] solidated-Vultee Aircraft Company, Convair.

Q. Do you recall the names of any firms in the other industries?

A. Yes. The most prominent non-aircraft customer during the latter period of my employment was the Fruehauf Trailer Company. Other typical non-aircraft customers during that same late period of employment were the Trailmobile Company, Wayne Works in Richmond, Indiana, builder of school buses.

Q. Were there any government sales, to your knowledge?

A. Yes.

Q. What installations or what institutions?

A. Government sales were made to each of the Government branches concerned with the maintenance of their aircraft. That was the large Government sale.

Q. Just for the record, Mr. Looker, can you tell me where Fruehauf was located at the time of this——

A. (Interrupting): Fruehauf had three factories, to the best of my recollection. One in Memphis, Tennessee; one in Avon Lake, Ohio; and one in the Los Angeles area.

Q. Did you sell to all three or just to one of those?

A. Beg your pardon?

Q. Did you sell to all three of Fruehauf's plants, or to selective——

A. (Interrupting): We sold to all three.

Q. Can you tell us where there was another one located?

[fol. 174] A. There was one located in Massachusetts, I believe.

Q. Can you tell us where Boeing is located?

A. We sold lockbolts to Boeing primarily at its major manufacturing works in Seattle, Washington, and also, to its Wichita factory in Wichita, Kansas.

Q. And where to Douglas?

A. To Douglas at its plant in Santa Monica, California; Long Beach, California; Tulsa, Oklahoma, to my present memory.

Q. And just one for Lockheed?

A. Lockheed, to its plant in Burbank, California, and also to its plant in Marietta, Georgia.

Q. Thank you. Do you have any recollection at all of the dollar value of sales at the time you left Huck Manu-

facturing Company applicable to lockbolts, that is, lockbolt sales?

A. It seems to me that it was somewhere around $4,000,000 for the Huck Manufacturing Company.

Q. During the period of your employ with Huck Manufacturing Company, was there a trend, noticeable trend, either upward, downward, or in any other conceivable direction, with respect to the sales of lockbolts?

A. Noticeable trend upward.

Q. Starting from what period of time?

A. Starting from the date that the lockbolts were first placed on the market.

[fol. 175] Q. And what date was that?

A. Around 1947, shortly after my employment with the company.

Q. Thank you. Mr. Looker, prior to the year 1952, how did Huck Manufacturing Company go about establishing the price for which lockbolts were to be sold? How were these items priced? What was the routine in Huck?

A. The procedure was that the company's president, Lewis Huck, gathered cost data on the production of lockbolts, including materiel costs, heat treatment costs, cost of coldheading, contuor rolling, and all of the various direct costs connected with the production of the part and established the additional factors normally applicable to such cost, for the computation of a selling price, such as factory burden and general and administrative expenses and profit. These computations, prior to his death in 1952, were made by himself.

Q. To what extent did this situation change after 1952? That is, after Mr. Huck's death in 1952?

A. A man by the name of Paul Pelletier was hired by the company and I don't know when he was hired. He was hired by the company for the purpose of establishing selling prices for the lockbolt devices and the installation devices as well.

Q. Did Mr. Pelletier establish these prices or did someone else do it?

A. Mr. Pelletier recommended price establishment to [fol. 176] Mr. Armour, who had the final authority for the establishment of prices.

Q. Is that the same Mr. Armour we have referred to earlier in these proceedings?

A. Yes.

Q. Mr. Looker, have you or did you, when you were employed by Huck Manufacturing Company, ever have any occasion to visit the production facilities of Townsend Company?

A. Yes.

Q. Do you recall the approximate time of the first occasion that you had to visit these facilities at Townsend?

A. It was prior to the death of Mr. Huck.

Q. In about what year approximately?

A. Approximately, 1951.

Q. With whom did you go?

A. I travelled to the Townsend Works in Beaver Falls, Pennsylvania, with Mr. Huck.

Q. Do you recall anything specific about how you got there?

A. Yes. We travelled in his private plane.

Q. Do you recall the purpose for your visit?

A. Yes. We travelled to the Townsend Company to discuss matters relating to a potential lockbolt patent license agreement with the Townsend Company.

Q. Was there anyone else accompanying you from Huck?

A. I am not certain.

Q. Mr. Looker, how—are you familiar with the facts [fol. 177] preceding this trip to Townsend Company that made it desirable, or necessary to make the trip?

A. Yes, I am.

Q. What were those facts?

A. The Townsend Company had expressed interest in engaging in the manufacture of lockbolt devices and had proceeded to manufacture and offer for the market for sale of lockbolt devices.

Q. Are you aware of any contacts between Townsend Company and Huck Manufacturing Company preceding your visit?

A. Yes. Mr. Huck had told me of discussions he had with Mr. Fred R. Dickenson, concerning this subject.

Q. Were you aware of the activities that Townsend Company had at that time in the lockbolt manufacturing field?

A. To some extent, yes.

Q. To what extent?

A. To the extent that I was aware of the fact that they had offered for sale a lockbolt device.

Q. Do you know any particular customers to whom they had offered this for sale?

A. They had offered for sale a commercial lockbolt to the Fruehauf Trailer Company for the construction of an Army Ordnance trailer vehicle.

Q. Did they offer, to your knowledge did the Townsend Company ever offer lockbolts for sale to any aircraft manufacturer?

[fol. 178] A. They did, yes.

Q. Which manufacturer?

A. I am not certain of that.

Q. Where was it located; do you know?

A. Yes. The activity of the Townsend Company, to my knowledge, was located in the California area, and——

Q. (Interposing): You say the activity of the Townsend Company. Which activity are you referring to, the sales or manufacturing?

A. The sales. The sales activity in their early production to the aircraft industry, I believe, at least to my own present knowledge, occurred in the Southern California area.

Q. Are you aware of any attempts by Lockheed to sell—strike that—by Townsend to sell to any aircraft manufacturers?

A. I am, yes.

Q. What was that incident?

A. The Townsend Company offered for sale an aircraft lockbolt product to Consolidated-Vultee Company at Fort Worth, Texas.

Q. How did you come to learn of this?

A. I travelled to the—to that company with Mr. Huck, as soon as Mr. Huck told me that that offer had been made, and that the Consolidated-Vultee Company had engaged in the purchase of lockbolts manufactured by the Townsend Company.

[fol. 179] Q. Did you have any discussions with any people at Consolidated-Vultee at that time?

A. Yes, we did.

Q. Do you remember any names of these people, their positions with Consolidated-Vultee?

A. The principal negotiator for the Consolidated-Vultee Company was there. I believe his title was Purchasing Agent. His name was Henry Jones. We had discussions with him; we had discussions with a buyer by the name of Pratt, P-r-a-double t. We talked to as many as 15 or 20 people of that company, and I don't remember anybody else's name, except a few.

Q. Do you recall the general subject matter of these conversations?

A. Yes.

Q. What was it?

A. The purchasing agent Mr. Henry Jones, had advised Mr. Huck that——

Mr. Pomeroy (Interposing): If your Honor please, I object to this as being incompetent, irrelevant and immaterial, on the ground that it is hearsay, and I object further on the ground that it is before the period of the indictment and therefore, incompetent.

Mr. Lipson: May I be heard, your Honor?

The Court: Yes.

Mr. Lipson: With respect to the fact that it is prior [fol. 180] to the period of the indictment, I believe the Government is obligated, and certainly has a right to show the events leading up to the alleged illegal agreement stated in the indictment.

The Court: That is true, but what about the objection?

Mr. Lipson: I will consent to having Mr. Looker's last statement stricken on the basis of Mr. Pomeroy's objection.

Q. (By Mr. Lipson, continuing): Mr. Looker, will you confine yourself to the discussions you had with the people at Consolidated-Vultee?

Mr. Pomeroy: I object to that, also.

The Court: You may answer.

A. All right. Would you repeat the question, please?

Mr. Lipson: would the reporter please read back the last question?

The Court: Maybe you had better reframe it, because it is kind of confusing.

Q. (By Mr. Lipson, continuing): Do you recall the general subject matter of the discussions you had at Consolidated Vultee at that time?

A. Yes.

Q. Would you relate to the Jury the nature of those discussions that you had?

[fol. 181] A. Yes.

Mr. Pomeroy: I renew the objection, if your Honor please.

The Court: All right. He may answer.

A. The Purchasing Agent, Mr. Henry Jones, had advised Mr. Huck and myself——

The Court: The nature of the discussions is the thing.

Q. (By Mr. Lipson, continuing): The nature of the discussion.

A. The nature of the discussions?

Q. What did you talk about?

A. We discussed lockbolt procurement and quality.

Q. Do you recall any specific conversations?

A. Yes.

Q. Would you relate the conversations you do recall?

A. The first conversation I recall was shortly after arriving with Mr. Huck, in Mr. Jones' office, and Mr. Jones at that time indicated that——

Mr. Haggerty (Interposing): I object to what he indicated.

Mr. Pomeroy: I object, renew my objection.

The Court: Sustained.

Q. (By Mr. Lipson, continuing): Do you recall the language used by Mr. Jones at that time?

A. Not exactly, no.

[fol. 182] Q. Do you recall the substance of what he said?

A. I do.

Q. Would you relate the substance of what he said?

A. The substance of Mr. Jones' comments——

Mr. Pomeroy (Interposing): If your Honor please, I would like to object. I hate to stand on my feet every other question, but I must object.

The Court: Sustained.

A. The subject of Mr. Jones'——

The Court: Sustained. The objection is sustained to any conversation; that is, anything he said to you has been objected to and sustained by the Court.

A. Yes, sir.

Q. (By Mr. Lipson, continuing): What did you say to Mr. Jones?

The Court: Can't we get this in by what the purpose of the call was?

Q. (By Mr. Lipson, continuing): Mr. Looker, what was the purpose of the visit to Consolidated-Vultee at that time?

A. To discourage the Consolidated-Vultee Company from the continued purchase of lockbolt devices from the Townsend Company.

Q. I would like to go back to the meeting—strike the word "meeting"—to the visit you said you had at the Townsend Company in 1951.

A. Yes.

[fol. 183] Q. Do you recall who you met with, whom you met with at that time?

A. Yes, I do recall.

Q. What are the names of those persons?

A. Mr. Huck and I met with Mr. Dickenson.

Q. Would you identify Mr. Dickenson's position?

A. Yes. Mr. Dickenson was the president of the Townsend Company.

Q. Is he here in the Courtroom?

A. Yes, he is.

Q. Would you point to him, please?

A. Yes, right there (indicating).

Q. Thank you. Was there anyone else beside Mr. Dickenson?

A. There were—there were other people at that meeting, yes.

Q. Do you recall any of their names?

A. No, I do not.

Q. Mr. Looker, would you indicate more directly who Mr. Dickenson is?

A. Mr. Dickenson is the gentleman in glasses and the striped tie.

Mr. Pomeroy: Stand up, Mr. Dickenson, so there won't be any mistake.

Q. (By Mr. Lipson, continuing): Thank you, Mr. Looker. Do you recall any conversations you had with any of the people of Townsend Company at that meeting in 1951 at that time?

[fol. 184] A. I don't recall the identical, or the actual conversations, other than occasional remarks, perhaps. I recall the substance of the conversations only.

Q. Well, what was the subject matter of the conversations?

A. The subject matter was a proposed patent license agreement between Huck Manufacturing Company and the Townsend Company.

Q. Did you have occasion to take a tour of the Townsend production facilities at that time?

A. Yes.

Q. Were you accompanied by anyone that you recall?

A. Yes. Mr. Dickenson took Mr. Huck and myself on a tour of the facilities of that company.

Q. After you had completed this tour, do you recall having any conversations, further conversation with Mr. Huck concerning that tour?

A. Yes.

Mr. Haggerty: Well, just a moment. I believe Mr. Huck is not a party in this case; he is not a co-conspirator. Mr. Huck is deceased, and this happened back in '51.

Now, any conversation that this man had with Mr. Huck is certainly not admissible under any theory of law, not even to show intent, pattern, design or motive.

Mr. Lipson: May I be heard, your Honor?

[fol. 185] The Court: Yes.

Mr. Lipson: Mr. Huck was president of the defendant corporation and as such we believe that defendant corporation is bound by what he has said. That is all.

Mr. Haggerty: It could only be—it could only be for the purpose of showing motive, intent, design and so forth. It could not have any probative value in this case.

The Court: I think this is purely preliminary, leading up to that which happened during the—the charge during the

period of the conspiracy. I assume that to be the situation?

Mr. Lipson: Yes, your Honor.

The Court: You may proceed.

Mr. Lipson: And it is also intended to show motive, as Mr. Haggerty pointed out.

Q. (By Mr. Lipson, continuing): What did Mr. Huck tell you?

A. Mr. Huck told me, after having completed the tour previously testified to, that the Townsend Company appeared to have substantial production capacity for the production of lockbolts; that they were, in his opinion—this is what he told me.

Q. This is exactly what we are asking for, Mr. Looker.

A. That they were what he called a barnyard rivet company; that their costs were extremely low in comparison to [fol. 186] the costs of the Huck Manufacturing Company's production in the City of Detroit; and that there was very little likelihood at this time that the Huck Company and the Townsend Company would enter into a patent agreement. That's about it.

Mr. Haggerty: Well, then, may it please the Court, I ask that this conversation be stricken as incompetent, irrelevant and immaterial.

The Court: It may stand.

Mr. Lipson: Thank You your Honor.

Q. (By Mr. Lipson, continuing): Do you recall any conversations or any statements made by Mr. Fred Dickenson to you or in your hearing at the time you were in Townsend Company's facilities on this visit?

A. Yes, I do.

Q. What were those statements?

A. The one direct quotation I remember most specifically is that he said to Mr. Huck and myself, at two or three different points in the negotiation, that quote—we're already in the business—unquote.

Q. Were there any meetings—after you—I take it you left the Townsend Company after awhile and returned to Detroit; is that so?

A. That is correct.

Q. After you returned to Detroit, were there any de-

[fol. 187] cisions made with respect to this license request, decisions at Huck Manufacturing Company?

A. Yes, there were decisions made.

Q. By whom?

A. By Mr. Huck.

Q. What was the decision?

A. The decision was not to grant the Townsend Company a patent license.

Q. Mr. Looker, following that point in your testimony, was there any litigation between the two companies, to your knowledge?

A. Yes, there was.

Q. Would you relate to the Jury the nature of that litigation, what it was about?

A. Huck Manufacturing Company filed suit against the Townsend Company for infringement, well, of its patents controlling the construction and manufacture and sale of lockbolt devices.

Q. What responsibility did you personally have with respect to this lawsuit?

A. I worked as a principal company employee with the attorneys who represented the Huck Company in the prosecution of that lawsuit.

Q. Where was the suit tried?

A. In Los Angeles, California.

[fol. 188] Q. Did you participate in the course of the trial at all, in any capacity?

A. Yes.

Q. In what capacity?

A. I assisted in the preparation of the demonstrations that were conducted in that Courtroom and I testified at some length.

Q. Mr. Looker, who won the lawsuit?

A. The judgment was handed down by that Court in favor of the Huck Manufacturing Company.

Q. Are you aware of whether or not any appeal was taken from that judgment?

A. Yes, I am.

Q. Was there or was there not——

A. (Interrupting): Yes, an appeal to the judgment was taken by the Townsend Company.

Q. Do you recall the approximate date, to the best of your recollection, of course, when this lawsuit ended?

A. It seems to me it was around Christmastime, 1952. At least, that is the time that the Judge handed down his decision.

Q. Thank you. After the Judge in California handed down his decision, were there any negotiations opened between Huck and Townsend with respect to a lockbolt license?

A. Yes.

Q. When did they open and under what circumstances? [fol. 189] A. Early in 1954, Mr. Armour told me that he had received a telephone call from Mr. Dickenson requesting a patent license, and requesting that I study the request in light of possibly making a recommendation.

Q. Do you recall whether this was before or after the appeal had been filed?

A. Yes. It was after the appeal had been filed.

Q. You are not a lawyer; are you, Mr. Looker?

A. No.

Q. How is it that—well, strike that. What was the nature of your position in Huck that Mr. Armour would have confided in you about this possible patent license?

A. Well, since the death of Mr. Huck, I had been charged with supervising the company's patent matters in conjunction with its attorneys. I didn't do the patent work myself, but I insured that is was done for the benefit of the company.

Q. Were there any meetings among the officials of Huck Manufacturing Company with respect to the opening of these negotiations, as you stated?

A. There was a meeting at which we decided that we would license the Townsend Company, yes.

Q. Do you recall who attended that meeting?

The Court: And when.

A. To the best of my memory, the meeting took place [fol. 190] sometime in May of 1954, and was attended by Mr. Armour, Mr. Benkert, and myself, and there may have been others, but I don't recall them.

Q. Do you recall whether there were any earlier meetings than that?

A. Well, I had met with Mr. Sterritt on many occasions discussing this general subject.

Q. Would you identify Mr. Sterritt? Who is he?

A. Yes. Mr. Sterritt is or was the patent attorney for the Huck Manufacturing Company.

Q. Would you identify Mr. Benkert? I believe you used his name as a member of this place?

A. Yes. Mr. Benkert was executive vice-president of Huck.

Q. When did he become executive vice-president?

A. Shortly after the death of Mr. Huck.

Q. Had he been employed with Huck before that?

A. Yes.

Q. In what capacity?

A. He was the Company's Treasurer.

Q. Do you recall the subject matter of the discussion?

A. Yes. We discussed the pros and cons of issuing a lockbolt license, first; and secondly, issuing a lockbolt license to the Townsend Company.

The Court: Excuse me.

Q. (By Mr. Lipson, continuing): Do you have any recollection——

[fol. 191] The Court: Excuse me. Does this have relation to the May meeting or previous discussions with Mr. Benkert and Mr. Sterritt?

A. This is with respect to the May meeting, your Honor.

The Court: All right.

Q. (By Mr. Lipson, continuing): With respect to the May meeting, do you recall any specific subjects that were discussed at the May meeting?

A. We discussed the pros and cons of issuing a lockbolt license and the effects of issuing such a license to the Townsend Company.

Q. Do you recall whether there was any discussion about price in that meeting?

A. Yes.

Q. Would you relate to the Jury the nature of that discussion about price?

A. Yes. There was a great concern about price.

Mr. Haggerty: I object to "concern", as calling for a conclusion.

The Court: Well, that may stand, but I would like to know who is talking. Who expressed the "concern"?

Q. (By Mr. Lipson, continuing): Would you try to identify the——

The Court: Who was the person that indicated concern, and what was the——

[fol. 192] A. (Interrupting): I had great concern about price.

The Court: All right.

A. And I expressed that concern to others. I also expressed the—my knowledge that the Townsend Company was capable of producing the lockbolt product at a cost lower than the Huck Company and therefore, an inherent concern with our ability to sell lockbolts with a lower-cost competitor, and I expressed that concern to those at that meeting.

Q. Now, at that same meeting, was there any discussion about the subject of Townsend's appeal in the patent suit, that your have just described?

A. Yes, there was.

Q. What was the nature of that discussion and who discussed it, to the best of your recollection? Who said what?

A. To the best of my recollection, I carried most of the points of the meeting, having prepared a memorandum before having gone—before going into that meeting, on these various points.

The appeal of the Townsend Company against the Lower Court's decision had not been heard. It was to—I expressed the opinion that it was to the Huck Company's interest to not have that appeal heard, because the Appellate Court could have declared each of the patents in suit invalid, and it could have declared that the Townsend Company had not, in effect, infringed the claims of those [fol. 193] patents.

Q. Mr. Looker, at that same May meeting, was there any discussion about the possibilities of patent re-development?

Mr. Pomeroy: I beg your pardon, possibilities of what?
Mr. Lipson: Patent redevelopment.
Mr. Pomeroy: Patent redevelopment. Thank you.

A. There were such discussions, yes.
Q. (By Mr. Lipson, continuing): Would you relate to the Jury the nature of these discussions?

Mr. Haggerty: Again, who said what.

A. Yes. I had been advised by Mr. Sterritt in the earlier meetings that the danger that the Huck Company faced, principally, in dealing with the Townsend Company was their desire to enter the lockbolt market field, whether there be Huck patents or not and whether or not those patents be valid, and that Mr. Sterritt expressed the opinion to me that the Townsend Company was going to enter the lockbolt business one way or another, and that it was to Huck's interest to license them, to keep the Townsend Company from developing a lockbolt-type product around the existing lockbolt patent claims.
[fol. 194] Q. Mr. Looker, was there any discussion at that meeting about the need or desirability of a second source?
A. Yes.
Q. Do you recall any of the discussions about that topic?
A. Yes.
Q. Would you explain to the jury what is meant by the term "second source", what the nature of the discussions were?
A. A second source, to the discussion here, second manufacturer, so that the company's products could be purchased by our customers from two different companies. The Douglas Company had complained to us and to Mr. Minor and to myself.
Q. Will you identify Mr. Minor, please?
A. Mr. Minor was the West Coast District Manager, working directly under me at that time.
Q. Would you continue please?
A. Yes. The Douglas Company had complained that our—the Huck Company's delivery reliability was not such as to savor the continuation of a single source product, and that the Douglas Company requested that we supply or furnish or see to it that it had a second source for the procurement of lockbolt devices.

Q. Do you recall whether Mr. Armour participated actively in this meeting, or whether he merely attended the meeting?

A. To the best of my recollection, he did participate actively.

Q. Now, when you say "participate actively", what do you refer to?

[fol. 195] A. Well, he entered into the discussions with the others present.

Q. Do you recall how long this meeting lasted?

A. I do not.

Q. Do you recall whether it was a very long meeting or a very short one?

A. I don't recall.

The Court: Maybe this would be a good time to take a recess.

Mr. Lipson: I think it would, your Honor.

The Court: Ten minutes, please.

(Whereupon, at 10:35 o'clock A.M., a recess was taken.)

[fol. 196] AFTER RECESS

(Whereupon, the jury returned to the court room at 10:55 o'clock A.M., and the trial of the above-entitled cause continued.)

ROBERT LOOKER, a witness called on behalf of the Govovernment, having been previously duly sworn, then resumed the stand, and testified further upon his oath, as follows:

The Court: Go ahead.

Mr. Lipson: Thank you, your Honor.

Direct examination (Continued)

By Mr. Lipson:

Q. Mr. Looker, I would like to remind you that you are still under oath.

A. Yes.

Mr. Haggerty: Just a moment. Your Honor, what is the purpose of this extraneous statement?

The Court: None. The gentleman is quite formal. I do not think there is anything intentional in this matter.

Mr. Haggerty: Well, I think if you repeat it, it could be prejudicial.

The Court: It might, but I do not think so at this time. [fol. 197] You need not repeat it.

Mr. Lipson: Thank you, your Honor.

Q. (By Mr. Lipson) Mr. Looker, referring again to the May meeting that you previously told us something about, was there any discussion at that May meeting about a late delivery problem?

A. Yes.

Q. What was the nature of that discussion, and to the best of your ability and to the best of your recollection who said what?

A. I called the attention—I called attention to the group that the Douglas complaint, previously testified to, was fundamentally based on relatively unreliable delivery situation which the Huck Company had at the time with respect to production and delivery of lockbolt devices.

Q. Was that the extent of the conversation, or discussion about that late delivery problem?

A. I think there was further discussion. As I remember it, the deliveries of the company's lockbolt products were running somewhere between six and eight weeks after receipt of order, which the Douglas Company found untenable and others also found untenable, and that this was a fundamental reason for the Douglas Company requesting us to establish a second source.

Q. Thank you, Mr. Looker. At about that period of time, [fol. 198] May, 1954, or in the preceding months, did Huck Manufacturing Company give any consideration to licensing any other firm, except Townsend Company?

A. For the manufacture and sale of lockbolts?

Q. That's correct.

A. Yes.

Q. What was this other firm?

A. The other firm was a company named Illinois Tool Works.

Q. How far did any negotiations go in that attempt or in that instance?

A. Well, negotiations——

Mr. Haggerty: (Interposing) Just a moment, I object to it unless they have a time now when these negotiations were carried on with Illinois.

Mr. Lipson: I will.

The Court: All right.

Mr. Lipson: I will elicit that now, your Honor.

Q. (By Mr. Lipson) When did these negotiations take place?

A. Sometime during the year 1953.

Q. Do you recall the individuals who participated in these negotiations, their names?

A. Yes, Mr. Sterritt, of the firm Harness, Dickey and Pierce, representing the Huck Company, myself, and for the Illinois Tool Works a Mr. Gene Fuller.

Q. What was the result of this negotiation?

[fol. 199] A. A lockbolt license was not entered into between the two companies.

Q. When did negotiations actually commence between Huck and Townsend Company for a lockbolt license?

A. Shortly after the May meeting previously testified to.

Q. In what year was that?

A. 1954.

Q. What form did these negotiations take? Were they telephone conversations, or letters, or meetings or combinations of any of those?

A. There were memoranda prepared by and between Huck, myself and Mr. Sterritt, and there was one meeting that I recall that took place in negotiations.

Q. Do you recall any meeting that may have taken place in about the month of June, or conceivably in the month of July, in the year 1954, here in Detroit?

A. Yes, I do.

Q. Do you recall who was present at this meeting?

A. Those that were there that I specifically remember at this time are Mr. Sterritt, of the firm Harness, Dickey and Pierce, Mr. Armour, Mr. Dickenson, myself and Mr. Tom Johnson, representing the Townsend Company, from a legal capacity.

Q. Now, is this the first meeting that you have a recollection of in connection with this phase of the negotiations? [fol. 200] A. Yes, that is correct.

Q. Do you know of any earlier meetings?

A. I don't remember any.

Q. Now, where did this meeting take place?

A. It took place in the offices of Harness, Dickey and Pierce, in the General Motors Building of this city.

Q. Will you identify Harness, Dickey and Pierce, I am not sure that is in the record.

A. Harness, Dickey and Pierce is a law firm located at 7-141 General Motor Building, in this city.

Q. Whom did they represent?

A. They represent, among others, the Huck manufacturing Company.

Q. Do you recall in which particular office of that firm's suite the meeting took place?

A. Yes, it took place in Mr. Harness' office.

Q. Was Mr. Harness present at that meeting?

A. No, he was not.

Q. Do you have any recollection of why Mr. Harness' office was used instead of any other?

A. Yes, there were several people there and Mr. Sterritt moved it to Mr. Harness' office, because it was a bigger office.

Q. Would you describe the general shape and size of Mr. Harness' office, as you recall it?

A. It is a large office, with windows on two sides, oh, [fol. 201] perhaps twenty by twenty feet square.

Q. Do you recall generally the type of furnishings in the office?

A. I picture it, yes.

Q. What kind of furnishings were in the office?

A. Usual leather chairs, and there was a couch on one side by the—by a window, or lower chair section, I am not sure which, and a large desk in one corner.

Q. Do you recall how the parties—strike that.

Do you recall how the people who attended this meeting arranged themselves? How they were seated?

A. The best I recall, Mr. Sterritt was sitting at Mr. Harness' desk, and Mr. Dickey and Mr. Johnson—Mr. Dickenson and Mr. Johnson—correction—Mr. Dickenson and Mr.

Johnson were sitting on the side of the room opposite the door, and Mr. Armour and I were on the opposite side of the room, and I was nearest the door, that's my present recollection.

Q. Do you recall where anybody else may have been seated in that room?

A. I don't recall, no.

Q. Did you say that Mr. Benkert had or had not attended this meeting?

A. I can't testify to that. I don't know.

Q. What was the purpose of this meeting?

[fol. 202] A. To negotiate the lockbolt license the company had intended to enter into.

Q. Were you there throughout the meeting?

A. Yes.

Q. Did you leave the meeting at any time at all?

A. Not to my memory.

Q. In what manner was the meeting conducted, what format was used?

A. Mr. Sterritt lead the meeting, bringing out first in each case points of the proposed license agreement which the Huck Manufacturing Company wanted in the agreement, and after each of the points brought out by Mr. Sterritt, discussion was held, if any discussion was in order.

Q. Do you have any recollection of any of these points, as you say, that were discussed?

A. Matters of prices were discussed. May I take a moment to think about this answer, please?

Q. Please do.

A. A period of exclusivity was discussed. Improvements to the lockbolt devices were discussed. The matter of royalties was discussed. The matter of audit of royalties was discussed. The matter of patent validity was discussed. And termination was discussed.

That is all I can remember at this time.

Q. Do you recall the nature of the discussion with respect to price?

[fol. 203] A. Yes, I do.

Q. Would you relate the nature of that discussion, to the best of your ability, identifying who said what?

A. In the early part of the meeting, the matter of price was discussed to the effect that the companies——

Mr. Haggerty: (Interposing) Well, I object unless it is indicated now who is speaking.

The Court: Sustained.

Q. (By Mr. Lipson) Will you please indicate, to the best of your recollection, who said what?

A. Mr. Sterritt brought up the point of the agreement, stating, as best I can recall, that the Huck Company wanted a price maintenance provision in the lockbolt patent license to extend for a two year period.

Q. Do you recall——

A. (Interposing) Which provision was accepted by Mr. Dickenson.

Q. Well, what did Mr. Dickenson say, can you recall?

A. Words to the effect that that is all right with me.

Q. Do you recall any of the discussion with respect to the improvements you mentioned were discussed?

Identifying again in this case, to the best of your recollection, who said what.

A. Again, Mr. Sterritt brought up the point, and he said that it was Huck's desire to request the Townsend Com-[fol. 204] pany to give Huck free license to any patentable improvement of the lockbolt devices licensed during the tenure of the lockbolt license agreement.

Agreeing at the same time in the proposal to license the Townsend Company on any subsequent improvement made by Huck during that same period.

Q. Do you recall any discussion with respect to exclusivity and again to the extent that you have such recollection, would you try to identify who said what?

A. The best I remember it again, Mr. Sterritt brought up the point that the lockbolt license would be exclusive for a two year period, and that was acceptable.

Mr. Dickenson indicated to the group that it was acceptable to the Townsend Company.

Q. On this matter of exclusivity, had there been any previous discussions within the Huck Manufacturing Company among Huck's officers?

A. Yes.

Q. About this subject?

A. Yes.

Q. Do you recall such previous discussions?
A. Yes, I do.

Q. When did they take place?
A. They took place at the Huck Company's offices in Detroit, in the May meeting previously referred to. During [fol. 205] that meeting, I brought up the point that if the lockbolt license were issued, it would behoove the company to have it on a non-exclusive basis.

The Court: Who was present?

A. Present at that meeting, as previously testified, to the best of my recollection, Mr. Armour, Mr. Benkert, and myself, and I now recall that Mr. Brilmyer was there.

Q. (By Mr. Lipson) Would you identify Mr. Brilmyer?
A. Mr. Brilmyer was an officer of the Huck Company. His title was vice president in charge of research, something like that. He was an engineer.

Q. Returning now to the meeting in Mr. Harness' office about which you were just testifying, was there any discussion in that meeting about an F.O.B. point, do you recall any such discussion?
A. I recall that there were discussions, but I don't remember what they were.

Q. At that meeting in Mr. Harness' office, did anyone ever leave the room—leave that office?
A. Yes.

Q. At what point in the meeting?
A. Towards the latter part of the meeting, Mr. Johnson and Mr. Sterritt left the office.

Q. Do you recall the circumstances immediately preceding their departure? Why they left?
[fol. 206] A. Prior to their leaving, Mr. Dickenson stated that he wanted the lawyers to leave the room because—or words to the effect that "we want to talk business now."

Q. Did the lawyers say anything when they left the room?
A. Not to my memory.

Q. Did they indicate where they were going?
A. Yes.

Q. As a matter of fact, did they leave the room?
A. They did leave the room.

Q. Who remained in the room when the lawyers were gone?

A. Mr. Dickenson, Mr. Armour, Mr. Johnson—no—and myself; the three of us, and any others who may have been there. That I don't remember, all who were at the meeting were there, except Mr. Johnson and Mr. Sterritt.

Q. Do you recall now whether there was any rearrangement in the seating plan that you have previously described after the lawyers left?

A. I don't recall such a rearrangement.

Q. Do you recall what the conversation was in this—at this meeting after the lawyers left the room?

Mr. Haggerty: May it please the Court, at this time I desire to interpose an objection. That the period covered in the indictment is October the 24th, 1961, and goes back five years. And any proof of a conspiracy would have to be within the five year period.

[fol. 207] Now, as to any conversations prior thereto, agreements or understandings, it could only be admissible for the purpose of showing pattern, design, intent or motive.

Therefore, at this time, I move the Court to instruct the jury that any testimony of this nature is not to be considered by them as substantive proof or having probative force of value, and not binding on the defendants in connection with the alleged commission of a crime as charged in the indictment, but is only for the purpose of motive, intent, proof and design.

Mr. Lipson: May I be heard, your Honor?

The indictment charges a continuing conspiracy, a continuation of a conspiracy. We allege in the indictment, and will prove, will fall within the five year limitation period.

The Government is entitled to show the existence of the conspiracy by facts that have taken place prior to the limitation period.

The Court: Counsel is arguing only that the jury be advised that the purpose of this testimony, and they are only to consider it for motive, intent and design.

Do you have any argument on that point?

Mr. Lipson: Yes, your Honor.

The Court: And not as to the substantive charge.

[fol. 208] Mr. Lipson: We introduce it for the substantive charge, your Honor.

The Court: To prove——

Mr. Lipson: (Interposing) To prove the continuing nature of a conspiracy, that the conspiracy was formed with the object of being continued, and in fact, was continued to the five year period that would be within the limitation period.

Mr. Haggerty: In response to——

The Court: (Interposing) That would take that to October, according to your argument, October of 1954, would it not?

Mr. Haggerty: No. The indictment is returned in '61, and there is a five year statute.

The Court: Five from '61 is '56?

Mr. Haggerty: 1956, and these events allegedly occurred in 1954.

Therefore, I say, your Honor, there can be no substantive proof in a conspiracy beyond the other—there can be no substantive proof having probative force of value.

Mr. Lipson: Your Honor,——

Mr. Haggerty: (Interposing) It must be—just a moment, please.

It must be committed within the period of the statute [fol. 209] of limitations.

It can only be shown for design, motive, intent and pattern, and that is what I am asking the Court to instruct this jury as of this time.

How can my brother in one breath breach the statute, and say that the statute of limitations does not apply, when there is clearly a five year statute connected with this alleged crime?

Mr. Lipson: Your Honor, the statute of limitations applies primarily to procedural matters, and does not affect the substantive rights of the parties.

As a procedural matter, we can show that within this five year period, there were continuing acts stemming from the inception of this conspiracy, at least as early as 1954.

I cite to your Honor's attention the case decided by this Circuit in the American Tobacco case, where, if memory serves, the Court went back many, many years, which is also a criminal anti-trust case brought under the Sherman

Act, and the Court considered for the purpose of the substantive crime, events that occurred many, many years preceding the statute.

The Court: Considered for the purpose of the substantive crime within the period of the statute, however, as alleged, but the testimony was taken to show, as counsel has said, [fol. 210] am I not correct, motive?

Mr. Lipson: I am not aware of such a limitation in the taking of the testimony of that case, your Honor.

The Court: Well, for the purposes of taking the testimony at this time—I will check it out, do you have that citation?

Mr. Lipson: I can get it for your Honor.

The Court: All right, so that we do not lose any time, I am going to go along with Mr. Haggerty on that proposition, that it may be received and the jury is advised that it is only to show motive and pattern, intent and design, and that you are to bear that in mind in the taking of this testimony, unless you hear from the Court to the contrary.

In other words, this might be taken—this testimony is being received to show a pattern, or a motive, but it is not to be taken as any evidence itself by itself, or as we call it, any substantive evidence of the crime itself, unless it occurred within the statutory period, which go into October of 1956, as I am told, is that understood?

Mr. Lipson: May I continue, your Honor?

The Court: Yes.

Mr. Lipson: Would the reporter please read back the last question and answer?

(Whereupon, the pending question was read by the [fol. 211] reporter.)

Q. (By Mr. Lipson) Will you please answer that question now, Mr. Looker?

A. I recall in substance what was said.

Q. Would you recall to the best—would you testify to the best of your recollection who said what?

A. After Mr. Johnson and Mr. Sterritt left the room, Mr. Dickenson addressed the group that was remaining and reiterated the fact that the Townsend Company had wanted an exclusive license to extend for the entire period of the patent license, rather than just a two year period.

And that on the other hand, Mr. Armour had wanted a patent license which had price-fixing provision—price maintenance provision to extend for the life of the patent, and that neither company had exactly what they wanted from that point of view.

That is, the Townsend Company did not have their exclusive license, and the Huck Company did not have their patent license which tended to—which fixed prices for the entire life of the patent agreement.

And that Mr. Dickenson did then propose that the companies enter into a supplementary verbal agreement to the effect that the Townsend Company would not violate the Huck lockbolt price structure during the life of the agreement, if the Huck Manufacturing Company refused to, or restrained themselves from issuing patent licenses to [fol. 212] potential competitors to the Towsend Company.

This is the proposal, as best as I can recall, given by Mr. Dickenson to the group in that room.

Q. Do you recall whether Mr. Armour said anything in reply to that proposal?

A. The best I recall, the next thing that was said was an objection that I raised that there should be no supplemental agreement entered into which did not take into consideration lockbolt devices which neither Huck nor Townsend Company wanted to manufacture, such as lockbolts manufactured from titanium materials which neither company was using at the present time, or lockbolts of such size and market or configuration as to not best behoove the manufacturing facilities of either company.

Now, I am sure I didn't use those same words, but that was the substance of my objection.

And there was some discussion on that point.

Q. What was the nature of that discussion?

A. An agreement was entered into.

Mr. Haggerty: Wait a minute. I object to the question. Any discussion.

Q. (By Mr. Lipson) Would you please confine yourself——

Mr. Haggerty: (Interposing) We are entitled, at the time of this, that we have first of all, that the witness

[fol. 213] as near as possible try to reconstruct the language that was used, indicate who was speaking.

If he can't, then the substance of it, indicating who was speaking.

The Court: I think Mr. Haggerty is correct.

Q. (My Mr. Lipson) That is exactly what we are trying to do.

The Court: All right.

A. I can't recall under the circumstances exactly who said what. I do recall there was some discussion after the objection I raised. I do recall the substance of that discussion was to the effect——

Mr. Haggerty: (Interposing) Just a moment. I object to it, if he can't recall. We are attempting to be charged here—we at least—if he can't recall the language and uses the substance, he must at least associate it with the person or persons who are doing the talking.

I object to it.

The Court: You related, witness, that you inserted this question of other products?

A. Yes.

The Court: As being not part of the license agreement.

And then you have indicated there was some discussion thereafter. Who is the person who began the discussion and what was said, as closely as you can recall?

[fol. 214] This is on the other products we are talking about?

A. Yes.

The Court: That you say you inserted.

A. Mr. Dickenson said, as best I can recall, that he had no objection to the inclusion of such a provision, and Mr. Armour reiterated the same conclusion.

The Court: In other words, they both agreed, is that correct?

A. That is correct.

The Court: All right.

Q. (By Mr. Lipson) Is this the first thing Mr. Armour said in this portion of the meeting, after the lawyers left the room?

A. That's the first thing I recall him saying.

Q. What happened after that discussion?

A. Mr. Armour stated, as best I can recall, words to the effect that "then we won't issue more lockbolt patent licenses if you keep our price structure for lockbolt devices."

Q. To whom was he addressing himself?

A. Mr. Dickenson.

Q. When did he say this, in which portion of the meeting?

A. This was toward the very end of it.

Q. Did anything occur in the meeting between the time of the discussion about the titanium material you mentioned, and this statement by Mr. Armour?

[fol. 215] A. I don't remember anything.

Q. Did anyone else participate in any discussion?

A. I don't recall.

Q. Did anyone take notes during the meeting?

A. I started to.

Q. Did you continue taking notes throughout that meeting?

A. Are you referring to the time after Mr. Sterritt and Mr. Johnson left the room?

Q. Yes.

A. Yes, after the lawyers left.

Q. After the lawyers left?

A. Yes, I started to take notes during that period.

Q. Did you take it throughout that period?

A. No, I took it only a very short period after they left.

Q. Why did you stop?

A. Mr. Dickenson asked me to stop.

Q. Do you recall Mr. Dickenson's words?

A. Words to the effect that "no notes, please".

Q. Did Mr. Armour say anything about that subject?

A. Yes, I was sitting next to Mr. Armour and then he turned to me and said to the effect, the same thing.

[fol. 216] Q. What did you do after receiving these instructions?

A. I then erased that which I had wrtten.

Q. Do you recall what you had written?

A. I do not.

Q. Was there any discussion at that meeting about any kind of enforcement provision or policing provision?

A. Yes.

Q. What was the nature of that discussion?

A. Mr. Dickenson and Mr. Armour had a discussion on the subject of policing the price maintenance agreement and period of exclusivity of the agreement just entered into.

Q. Do you recall who said what?

A. Only in substance.

Q. Do you recall what Mr. Dickenson said?

A. Only in substance.

Q. What did he say in substance?

A. In substance, Mr. Dickenson proposed that the policing of the price maintenance provision just agreed to would be done by himself for his company and suggested that they be done by Mr. Armour for the Huck Company, and that any negotiations and discussions relating to price structure or complaints relating to price structure violations or alleged violations be carried out in a direct relationship between Mr. Armour and Mr. Dickenson, and that members of the administrative or supervisory staff of either company were not to enter into such negotiations [fol. 217] between the companies, or to enter into such discussions between the companies relating to prices.

Q. Do you recall the substance of Mr. Armour's remarks?

A. Yes. He indicated that that was a very good idea and he indicated that to Mr. Dickenson and also to me.

Q. Do you recall his exact language?

A. I do not.

Q. Was there ever any discussion at this same part of the meeting about what would happen if one of the companies or the other did not carry out the proposals involved?

A. Yes.

Q. What was the nature of that discussion, to the best of your recollection? Who said what?

A. As previously testified to, Mr. Armour stated to Mr. Dickenson that, or words to the effect that—let's see—"We will not enter into any other lock bolt patent license excluding those products which neither company wants to manufacture, if you keep our price structure".

Q. Was there any statement made as to if the price structure were not kept?

Mr. Pomeroy: Objected to as leading.

The Court: It is, rather, but you may answer.

A. I don't recall.

Q. (By Mr. Lipson, continuing): Do you recall anything that Mr. Dickenson said on that subject?

[fol. 218] Mr. Pomeroy: He just said he didn't recall, if your Honor please. I object to this as further leading.

Mr. Lipson: I believe the earlier question was directed to what Mr. Armour had said.

The Court: We will wait a second.

A. I don't recall Mr. Dickenson saying that or anything like it.

Q. (By Mr. Lipson, continuing): Did you ever make any remarks as to your position in this new scheme of things?

A. Yes, I did.

Q. What remarks did you make?

Mr. Haggerty: I object to it unless a time is fixed.

Q. (By Mr. Lipson, continuing): Well, at what point of the meeting did you make such remark?

A. The remarks that I recall were made during that period of time when Mr. Sterritt and Mr. Johnson were not in that office, and during the period that the supplemental agreement was entered into when Mr. Armour indicated to me that any negotiations or any intercourse, so to speak, between the two companies on the matter of price were to take place, that he and Mr. Dickenson would be the parties that negotiated or talked about this matter, and I told Mr. Armour that at that time, the best I recall, that if I hear of any violations or alleged violations of the [fol. 219] price structure agreement entered into, I would tell him about it, and that was to be my role, as agreed upon with Mr. Armour and myself at that time.

The Court: With Mr. Dickenson present?

A. Mr. Dickenson was present, yes. The discussion was between Mr. Armour and myself.

Q. (By Mr. Lipson, continuing): How long did that part of the meeting last, while the attorneys were out of the room?

A. I don't recall.

Q. Well, could you estimate the time as being more or less than an hour?

A. I would estimate it at being somewhere around 45 minutes, but I don't recall the time. That is just an estimate.

Q. Do you have any recollection of anything that transpired at this meeting after the lawyers had left the room, that you have not already testified to at this time?

A. No, I don't.

Q. How did the meeting adjourn?

A. We all got up and left.

Q. Where did you go?

A. I don't recall.

Q. Do you recall ever coming in contact with the two lawyers again?

A. Hmm,——

Q. I mean immediately after the meeting.

[fol. 220] A. I believe I went down to Mr. Sterritt's office and saw him, but I am not real sure of that.

Q. Did you have any conversations with Mr. Sterritt at that time about what transpired at this portion of the meeting where he was not present?

A. I don't ever recall having discussed that with Mr. Sterritt, then or later.

Q. Did you ever have any discussions of that kind with Mr. Johnson?

A. I don't recall that, either.

Q. Mr. Looker, was there a formal written agreement ever entered into between the two companies, Huck and Townsend?

A. Yes.

Q. About when, in relationship to this meeting that you were discussing?

A. Possibly two months later.

Q. Was there any other meeting to your knowledge between the time that this agreement was entered and this meeting that you have just concluded testifying about?

A. I don't recall any such meeting.

Q. Mr. Looker, after the license agreement was—the formal license agreement was entered, do you recall having —taking a trip to the Townsend facilities?

A. This is before the license agreement was entered into?

Q. No, after the license agreement was entered. If I said [fol. 221] "before", I misspoke myself.

A. Excuse me. Yes, I do recall such a trip.

Q. Do you recall the circumstances surrounding that trip?

A. Yes.

Q. What was the purpose of that trip? Well, when did it occur?

A. It occurred some time in the spring of the following year. That is somewhere around April or May of 1955.

Q. What was the purpose of that trip?

A. The purpose was to discuss with Townsend Company matters relating to freight equalization for the shipment of lock bolts.

Q. What is freight equalization? What does it mean?

A. Freight equalization is a process which—process—it is a means by which competitors credit their customers with freight equal in amount in dollars to the difference between the freight rates on their products and the freight rates, if they had bought their products from their nearest competitor. I don't know if that is very clear or not.

Q. Do you recall the nature of the discussions you had at Townsend?

A. Yes. I discussed this matter with—I recall discussing this matter with Mr. Horst.

Mr. Haggerty: Just a moment. May it be established who was present?

Q. (By Mr. Lipson, continuing): Who went with you?

[fol. 222] A. Mr. George Q. Matthews, then the Sales Manager of the Huck Manufacturing Company.

Q. Whom did you meet with at Townsend?

A. Mr. Matthews and I met with Mr. Dickenson and Mr. Paul Horst.

Q. Would you identify Mr. Horst?

A. Mr. Horst had the title of Assistant to the President of the Company at that time.

Q. Is Mr. Horst in the Courtroom at this time?

A. He is, yes.

Q. Do you recall the nature of the discussions you had with Mr. Horst at that time?

A. I do, but before I answer that, I would like to say

there was one other person present during a portion of that time, and that was the Traffic Manager of the Townsend Company.

Q. Do you recall that man's name?

A. Briceland, or something like that.

Q. Were there any meetings that were occasioned by your visit?

A. Yes. I met with Mr. Horst and Mr. Briceland and Mr. Matthews at one point, and we discussed——

Q. (Interposing): Where did the meeting take place?

A. In the Townsend Company's office in New Brighton, Pennsylvania, and at that meeting discussions were held among the four people—among and between the four people that were there on freight equalization and the advantages [fol. 223] of freight equalization versus prepaid freight, and how the Townsend Company engaged in such practice in the distribution of their solid rivet business.

Q. At that time, Mr. Looker, to what extent was the freight charge incorporated in the price to the customer? I am speaking of lock bolts now.

A. Now, the Huck Company policy in that regard was to ship all of its products FOB its works in Detroit.

Q. What is the commercial meaning of the term "FOB"?

A. Freight On Board is the designation. It means that the customer actually takes title to the product shipped when it has been received by the common carrier and pays the transportation of those products from the producing point to its location.

Q. Do you recall who did say what in this meeting that you described at the Townsend Company?

Mr. Haggerty: May it please the Court, at this time I would like to make objection for the reasons heretofore assigned, that it is not within the period of the indictment. There is an allegation contained in the Government's indictment where they at least impute some criminality as to this freight arrangement and therefore, I ask the Jury be instructed and I desire to give your Honor an additional case, or rather a recent case of the United States Supreme Court, [fol. 224] Delli, D-e-double l-i, Paioli, P-a-i-o-l-i, versus the United States, 352 U.S. at Page 232, in support of my contention.

The Court: With respect to this proof, ladies and gentle-

men of the Jury, that is being offered here as to freight differential, I again advise you that this testimony is being received to show motive, intent, the design, and the pattern of the charge, and not to show a substantive offense, but to show its design, motive, pattern, I repeat, during the statutory years that are permitted in this case, from 1956 to 1961, unless otherwise indicated.

All right.

Mr. Lipson: Would the Reporter please read the last question?

(Thereupon the record was repeated as indicated by the Court Reporter.)

A. I recall only the substance of two of the discussions which were held.

Q. (By Mr. Lipson, continuing): Would you relate the substance of those discussions and tell us when they took place?

Mr. Haggerty: Well, I object unless it is indicated who was speaking.

The Court: And who was present.

Q. (By Mr. Lipson, continuing): And who was present?

A. Yes. The first discussion took place at the desk of the [fol. 225] Traffic Manager, this Mr. Briceland, and present were Mr. Horst, Mr. Matthews and myself, and at that time, Mr. Briceland indicated to me, primarily for my benefit, the mechanics of equalizing freight with a competitor.

He explained how rates were computed and then, added or subtracted from the customer's bill, as the case may be, and as I remember in that meeting, Mr. Briceland said about everything that was said and I didn't enter into it too much, and that I listened, because I was learning something and I don't think Mr. Matthews said much, either. I don't remember him saying much. That's about all I remember of that meeting.

Now, after that, we saw Mr. Dickenson in his office, and present there——

The Court: When you say "we," whom do you mean?

A. And present there were Mr. Horst, Mr. Matthews and myself, and possibly others whom I do not recall and at

that time, Mr. Dickenson told me that the freight equalization was the best, cleanest and cheapest way to insure that neither company enjoyed a competitive edge with respect to the ultimate cost to the consumer of the lock bolt product.

At that time I told Mr. Dickenson my position in the matter, which was a position independently arrived at, and I didn't think it was a very good idea at all and I [fol. 226] indicated that to Mr. Dickenson, in my opinion, the freight equalization was not a point which would either help or hurt either company, and that was a point of substantial burden from an administrative standpoint for our company, the Huck Company, that is, as we do not already have a Traffic Department, and we would—we would have to establish one and administer it at cost and that I remember saying to Mr. Dickenson that a few dollars don't make much difference in the sale of lock bolts; that lock bolts are sold by vigorous sales activity and the like, and we had a different opinion on that and we never did come together during that meeting, and I don't remember anything else said by anyone else, except what I have just told you Mr. Dickenson and I said.

Q. Do you recall ever paying a visit to Townsend's facilities in California?

A. Yes.

Q. Where are they located?

A. In Santa Ana, California.

Q. What is the name of that branch of the Townsend Company?

A. It was then called the Cherry Rivet Division of the Townsend Company.

Q. When did you pay this visit?

A. As close as I can recall, 1955 was the year, and I don't even remember what part of the year it was in.

[fol. 227] Q. Do you recall the purpose for your visit?

A. The purpose of my travelling to California was to administer in a more or less routine fashion the sales activities of the company on that—in that part of the country. I did specifically pay a call on the Townsend Company's Santa Ana factory for the purpose of discussing a matter with a Mr. Howard Chilcoat.

Q. Would you identify his position with Townsend?

A. Mr. Chilcoat was then the Sales Manager of the Cherry Rivet Division, as best I remember.

Q. Is Mr. Chilcoat in the Courtroom at this time?

A. He is, yes.

Q. Was there anyone else representing Huck at this meeting you had with Mr. Chilcoat?

A. Yes. Mr. Miner.

Q. Would you spell that?

A. M-i-n-e-r, whom we have identified, was with me at that time.

Q. Was there anyone else present at your discussions with Mr. Chilcoat?

A. I don't believe so.

Q. Where were those discussions and who said what?

A. Prior to calling on Mr. Chilcoat, I had received from the company's Texas representative a report that the Townsend Company's sales agent in Fort Worth, Texas, had told the Convair plant in Fort Worth that they were [fol. 228] going to stock and distribute lock bolt devices for aircraft use in Fort Worth, Texas, along with their stock of the cherry rivets, which they distributed in the area, again manufactured by the Townsend Company.

Having had that report it was my purpose to discourage the establishment of such warehouse facilities and distributor facilities in Fort Worth, as this would give the Townsend Company a competitive advantage over the Huck Company for sale of aircraft lock bolt devices in the Fort Worth-Dallas area, which has a heavy concentration of aircraft construction.

Q. Do you recall what you said to Mr. Chilcoat?

A. Only in substance. Yes, I do, in substance.

Q. And what was the substance of that?

A. I reiterated to Mr. Chilcoat——

Mr. Haggerty (Interposing): Just a moment. May it please the Court, I renew my objection for the reasons heretofore cited, and an additional one: That the proofs in this case will show that there was a contract entered into by and between Huck and Townsend in writing on September 14th, 1954; that it was a legal, valid and subsisting agreement.

There is no claim made by the Government it was other than that, and that anything that was done by this man

during that period of time within the two years exclusive-
[fol. 229] ness in the contract, was done in a legal, lawful and a valid manner, and there can be no inference or imputation of criminality.

Mr. Lipson: May I be heard, your Honor? From the information already elicited from this witness, it is clear the Government's position is that this formal contract was less than the entire agreement. In that light, we would like to present to the Court the way in which the entire agreement was actually enforced and carried into effect, in order to show there was a continuing agreement.

Mr. Haggerty: In reply to my brother, the contract states within itself, when introduced it will be shown to the Jury, that there was a two-year exclusiveness, a two-year price, which is absolutely legal under then-existing and the present-existing law, as Huck was the—had the patent right and Huck had a right for the full life of the patent, for 17 years, if it so decided, to fix the price and give an exclusive to Townsend, which in effect they did give them for two years only.

Now, this is within the two-year period and it is absolutely legal and valid and a violation of no Federal law. It could not be.

Mr. Lipson: Your Honor: I believe your Honor has already ruled on the question that patentees cannot engage in this activity, that it would be a violation of the Sherman
[fol. 230] Act, and we have gone into this matter before you in motion.

Mr. Haggerty: Oh, I object, that your Honor has ruled to any such effect, at this time, and I think it is highly prejudicial for the Government's counsel to so state in a Court before a Jury.

The Court: And the Jury is asked to disregard it.

Mr. Lipson: May I be heard your Honor?

The Court: I am wondering whether or not counsel's objection doesn't go into whether or not the agreement—there was the—I mean, the testimony discloses that counsel were present to draw an agreement. We have never heard from the witness as to whether an actual agreement was established.

As I understand the testimony, the witness said that they did enter into an agreement, an agreement was drawn some

six weeks later or some such period, and perhaps it would be in better order at this time to offer the agreement, to determine whether or not that which the witness is now testifying was in accordance with the written agreement, or beyond the scope of the agreement, or whatever it might have been.

Mr. Lipson: Your Honor, the Government readily concedes that the material the witness is testifying to now [fol. 231] would fall within the scope of the written agreement, but the Government's position is that the written agreement was, itself, only part of this larger, broader agreement and it is this larger broader agreement that the Government is contending to prove. This is a part of that agreement.

The Court: Of course counsel on the other side of the table argues that it is in accordance with the agreement, and that which was done was proper. So, I think the best way to do that is determine what is in the written agreement and let the Jury determine if it is part or not part of, as you call it, the broader agreement.

Mr. Lipson: Your Honor, we are prepared to introduce the agreement, although I haven't anticipated doing it at precisely this moment.

The Court: I thought perhaps that was what you might have in mind and perhaps it would be better because it is now a matter for the Jury's determination to determine whether it is or not within the terms of the agreement, itself, and as counsel has stated, he said it is lawful, and as you say, it is part of the greater agreement and therefore, unlawful; and therefore, it is part of their job to determine what is what, and I think perhaps it would be well that you offer the agreement at this time.

Mr. Lipson: I am prepared to do so, then, your Honor. If your Honor wants to break for lunch now, we could [fol. 232] do it afterward, or may I have five minutes to get the document?

The Court: Well, I think perhaps it would be well that you break now and then, you both can agree as to whether or not it will be admitted, or what parts are to be deleted, or whatever the score might be, so we can proceed without delay.

The best time to do it would be right now, and that way,

Mr. Haggerty will lose some of his time for lunch. So, we will break for lunch until two o'clock.

Remember, ladies and gentlemen of the Jury, don't discuss this with each other, and above all, of course, not with anyone else. So, see you back here at two-o'clock promptly.

(Thereupon the hearing in this cause was adjourned until the afternoon of the same day Wednesday, February 27, 1963, at 2:00 o'clock in the afternoon.)

[fol. 233] Detroit, Michigan, Wednesday, February 27, 1963, 2:05 o'clock P.M.

(Whereupon, the trial of the above-entitled cause was resumed pursuant to the recess.)

The Court: Ready? The parties ready?

Mr. Lipson: Government is ready.

The Court: It is noted by the Court all parties are here, including the defendants and their counsel.

Mr. Haggerty: Ready, your Honor.

The Court: You may proceed.

Mr. Lipson: Thank you, your Honor.

Robert Looker, a witness called on behalf of the Government, having been previously duly sworn, resumed the witness stand, and testified further upon his oath, as follows:

The Court: I think maybe at this time it would be well that I advise you that the Court has reviewed the law with respect to the objection that counsel has made, wherein it was contended by Mr. Haggerty, representing two of the defendants, that the testimony was admitted prior to the [fol. 234] period of the so-called statute of limitations.

It was to be admitted only for the motive, design and pattern.

The Court has done some research and I have decided to change my admonishment to you and state this way.

That you may accept that evidence and that testimony, and that it is competent to show the beginning of the alleged relationship or agreement between the parties

And it is incumbent, of course, upon the Government to show that there is a continuation of that agreement within the statutory period.

I think that would be sufficient to say at this time.

And, I quote for the defendants the authorities in Shaw against United States, 41 Fed. 2d. 26.

Imholte vs. the United States, 226 Fed. 2d. at page 589.

American Tobacco vs. the United States, 147 Federal Reporter—Fed. 2d., page 120, under paragraph 61 and 63.

And Grunewald against the United States, 353 U.S., at page 396.

All right, you may proceed.

Mr. Lipson: Thank you, your Honor.

[fol. 235] Would the reporter please mark this document 17.

(Whereupon, a document was marked Government's Exhibit No. 17, by the reporter, for identification.)

Mr. Lipson: The document is marked Government's Exhibit No. 17. I show it to the defendants for examination.

(Handing exhibit to counsel.)

Mr. Lipson: Would you mark this as 18.

(Whereupon, a document was marked Government's Exhibit No. 18, by the reporter, for identification.)

The Court: I am sorry to advise you, too, I should have said this to you before, the Chief Judge has requested a meeting at 4:00 o'clock, so I have to break away at 4:00 o'clock today. I do not think I will make the jury mad, but it might make others.

So, I am going to have to recess at 4:00 today.

Mr. Haggerty: May it please the Court, I have no objection.

Mr. Lipson: It hasn't been offered, yet, Mr. Haggerty.

Mr. Haggerty: It has not been offered?

Mr. Lipson: Not yet, Mr. Haggerty. Thank you.

The Court: I would think—you gave it to them for their examination, that normally it is usually following an offer, or a proffer, so I would assume that would be a natural response that he would have.

[fol. 236] Mr. Lipson: I am sorry if I acted out of order, your Honor.

Direct Examination. (Continued)

By Mr. Lipson:

Q. Mr. Looker, I show you Government's Exhibit No. 17. Now ignoring the first two small pages in the upper lefthand corner, and the two letters, starting with page number one, do you have it there?

A. Yes, I do.

Q. Will you turn to page eight. Can you identify any of the signatures appearing on that page, page eight?

A. Yes, I can.

Q. Which signatures can you identify?

A. I can identify the signature of A. Watson Armour, the III, and the signature of Alfred H. Benkert.

Q. Can you identify the document itself?

A. Yes, I can.

Q. What is it?

A. The document is a copy of the patent license entered into between——

Mr. Haggerty: (Interposing) Just a minute. I object to it until and unless it is offered in evidence.

Q. (By Mr. Lipson) What is the title of the document, Mr. [fol. 237] Looker?

A. Agreement.

Q. Does it purport to bear any dates?

A. It does.

Q. What date does it purport to bear?

A. It purports to bear two dates.

Q. What are they?

A. September 3, 1954, typed on the top of the first page, and the 14th day of September, 1954, partially written by hand on the first paragraph of the first page.

Offers in Evidence

Mr. Lipson: Your Honor, at this time, prior to offering No. 17 into evidence, I would like to offer as Government's Exhibit No. 18, the stipulation entered into between counsel for the defendants and the Government, with respect to the testimony of Mr. H. E. Young, in this case.

(Handing exhibit to counsel.)

Mr. Lipson: I offer the stipulation, your Honor.

Mr. Haggerty: No objection. I suppose when it is signed and filed it becomes part of the record and files of the Court and it is not necessary to introduce it into evidence.

The Court: It is made—he identified it separately, so we will accept it for what it is.

Mr. Lipson: Your Honor, at this time, the Government offers into evidence Government's Exhibit No. 17, as the [fol. 238] lockbolt license agreement, with this qualification, your Honor:

Attached to it are four pieces of paper that are not offered as part of 17, they are only attached to it because that is the way the document was received—those four top pieces of paper are not offered in connection with 17; 17 refers only to the eight page legal sized paper document.

The Court: All right. Why not just have the reporter just turn those four sheets over and then we can—turn them over on to the back, and then we will have the reporter here staple them or put some tape on it so that they are not part of it.

Mr. Haggerty: Why not take them off, your Honor?

The Court: You can take them right off, if you want to.

Mr. Lipson: With your permission, your Honor, we will do so. We were reluctant because they are not our papers.

The Court: All right.

Mr. Lipson: We have no objection to taking them off.

Q. (By Mr. Lipson) Mr. Looker, I show you Government's 17——

The Court: (Interposing) You now offer 17?

Mr. Lipson: Yes, your Honor.

[fol. 239] Mr. Haggerty: May it please the Court, if your Honor will examine the documents you will see that there is some red underlining and red marginal notes. In the absence of an explanation, we object to the receipt of the document into evidence without any explanation as to why they are there or who put them there.

Mr. Lipson: Your Honor, if I was called upon to give an explanation, I frankly will say that I cannot. The document is in the same condition under which it was received by legal process from the defendants in this case. If an interlineation was made there, I cannot explain it.

Mr. Haggerty: I am satisfied with counsel's explanation made in good faith, that that is the way he received it.

The Court: All right. Then it may be received.

Mr. Pomeroy: May I ask Mr. Lipson——

Mr. Lipson: (Interposing) Yes, sir.

Mr. Pomeroy: (Continuing) —from which defendant this particular copy of the license agreement was received, if he knows?

Mr. Lipson: Yes, I can tell from the markings in the lower righthand corner. It is a numeral preceded by a letter "J", which would indicate it came from the Huck Manufacturing Company.

[fols. 240-245] Mr. Pomeroy: Thank you.

We have no objection to the exhibit, your Honor.

The Court: It may be received.

* * * * * * *

[fol. 246] Q. Thank you. At this time, Mr. Looker, I would like to go back to a subject we were discussing this morning about a visit you paid to the Santa Ana facilities of the Townsend Company.

Do you recall the subject matter we were pursuing?

A. Yes.

Q. I believe at that time I was trying to elicit from you—or I asked you the conversations you had with a Mr. Chilcoat. Do you recall having had any such conversations with Mr. Chilcoat at that time?

A. Yes, I do.

Q. Would you relate those conversations to the jury, specifying who said what, and give us an indication of the time that those conversations occurred.

Mr. Haggerty: May it please the Court, I object to the question for the reason that the document just received in evidence, the Government's Exhibit 17, shows it is within the purview and contained under that document:

Number one. That Huck granted to Townsend a period of two years an exclusive license.

Number two. That Townsend agreed to hold the price line for two years under that document.

[fol. 247] That it was absolutely a valid and legal agreement.

Under the General Electric case and other cases in accordance with this, that follow it.

Therefore, there can be no criminality alleged or inferred or by innuendo injected in this case that any agreement, any conversation they had in 1955, while this agreement was in effect, starting September 14, 1954, and running two years, could not be received in evidence.

Further, that it is irrelevant and it is immaterial.

Mr. Lipson: I will pass the issues of relevancy and materiality.

Upon Mr. Haggerty's theory, it would be impossible for the Government to ever prove a conspiracy case of this nature because obviously during the two years' period there would be no grounds for such a prosecution, and after the two-year period, the Government, by Mr. Haggerty's theory, would be precluded from introducing any evidence what happened in the two-year period, but more basically, your Honor, this is only part of the general conspiracy rule that acts, legal in themselves, when taken together to form a conspiracy become part, or can certainly become part of an illegal relationship.

Again I cite to your Honor's attention the case decided [fol. 248] by this Circuit, approved by the United States Supreme Court, one of the leading criminal anti-trust cases, the American Tobacco case, where the Court made just such statements in its decision.

Mr. Haggerty: I say, may it please the Court, there is no holding that where there is a valid, legal subsisting contract and in accordance and under the terms of that contract, Mr. Looker in his then position was consulting with someone from—representing Townsend, in reference to some compliance with that valid and subsisting contract that it is not admissible into evidence.

It doesn't tend to prove anything. That it is incompetent and it is immaterial.

And it was a perfectly legal valid act as he had a right to do, and as he had a right to investigate at that time.

The Court: I think your statement is correct. However, I think the testimony is admissible.

You may proceed.

Mr. Lipson: Thank you, your Honor.

A. Would you repeat the question, please?

Mr. Lipson: Would the reporter please read back the question?

(Whereupon, the pending question was repeated by the reporter.)

[fol. 249] A. The meeting that Mr. Chilcoat—referred to in previous testimony—took place during sometime in 1955. The conversations which I will relate took place in Mr. Chilcoat's office between Mr. Chilcoat and myself, with Mr. Miner present.

I called Mr. Chilcoat's attention to the matter reported to me by Mr. Unfried in Fort Worth, Texas, regarding the establishment of a distributorship for lockbolts by the Standard Parts Company of Fort Worth, Texas; a Cherry and Townsend sales agent and distributor.

Having called those matters to Mr. Chilcoat's attention, Mr. Chilcoat told me it was not the Townsend Company's intention to establish that company as a distributor and that the Townsend Company's intentions were to live up to the lockbolt patent license agreement to its very letter.

I further told Mr. Chilcoat, after having heard that, to the effect that if the Standard Parts Company were appointed as a distributor in Fort Worth, the Huck action would be to establish its own warehouse in that same area, wherein neither company would benefit by more sales, there being an offset to the—any advantage one to the other, and that it would merely cost us more money in doing business.

Q. Do you recall having any conversations with Mr. [fol. 250] Chilcoat at that same time about the subject of freight equalization?

A. I don't recall such conversation.

Q. Mr. Looker, do you recall having had any telephone conversations with a Mr. Paul Horst at any time with respect to the matter of freight equalization?

Just answer yes or no, if you have any recollection.

A. Yes, I do remember one such incident.

Q. Can you give us the approximate time?

A. I remember it as a telephone conversation I had with Mr. Horst prior to visiting he and Mr. Dickenson at the Townsend Company, more or less setting up the visit and

discussing the matter over the telephone as well, to a very limited extent.

Q. What was the approximate date of the conversation?

A. Early 1955.

Q. Do you recall anything of that conversation?

A. I do not, no.

Q. Did Mr. Horst—do you have any recollection of Mr. Horst paying any visit to Huck Manufacturing Company in connection with freight equalization?

A. Yes, I do.

Q. Would you tell us about what time this occurred?

A. Either late 1955 or early 1956. I can't pin it any closer than that.

Q. Do you recall whether Mr. Horst was accompanied [fol. 251] by anyone when he came to you—came to Huck?

A. I believe he was accompanied by a Mr. George Bentley.

Q. Do you recall the purpose of his visit?

A. I can't testify as to the purpose of it.

Q. Do you recall any conversations you may have had with Mr. Horst at that time?

A. I can recall some conversation, yes.

Q. Would you relate to the jury the nature of those conversations, and who said what?

Mr. Haggerty: May it please the Court, I object to it for reasons heretofore assigned in this type of conversation. Objections made on the record.

The Court: All right, you have your objection.

Proceed.

Q. (By Mr. Lipson) Would you please answer the question, Mr. Looker?

A. Yes. I can state only in substance what was discussed in more or less general terms. The meeting, as I remember, was held in my office, and Mr. Horst and Mr. Bentley were there.

The Court: Will you identify Mr. Bentley?

A. Mr. Bentley was at the time, I believe, the general sales manager of the Townsend Company.

The Court: All right.

A. Mr. Horst reiterated the Townsend position, that [fol. 252] they wanted freight equalized for shipments

of lockbolts and I reiterated—at least, what was my own private opinion at the time, I am not certain, and I wasn't certain it was the company's opinion, that we didn't want to equalize freight on the shipments of lockbolts.

And I stated to Mr. Horst why I thought it was a bad idea to equalize freight, and he stated to me why he thought it was a good idea, and that's about as far as we got.

Q. How long did the visit last?

A. I don't know.

Q. Did you have any discussions with Mr. Armour, the president of your company, about this matter of freight equalization about that time?

A. Yes, I did.

Q. Can you recall the approximate time you had these conversations with Mr. Armour?

A. No, I cannot.

Q. Do you recall what part of what year it may have been?

A. Discussions on the matter of freight equalization and like topics relating to who pays the freight, were discussed between myself and Mr. Armour from time to time for the entire period of my employment, during which there was in existence a lockbolt patent license between Huck and Townsend. I don't recall any specific conversation. I [fol. 253] recall it was a matter of general discussion often.

Mr. Armour told me on many occasions that Mr. Dickenson wanted freight equalization and I would give my argument that I thought it was a waste of time and money to consider it. This was the position that I took during my entire employment, during that period of time, and that's about the best I can answer your question.

Q. Thank you.

Mr. Looker, do you recall paying any other visits to the Townsend Company facilities in Pennsylvania but for the one you have already told us about?

A. I only remember the two visits previously testified to.

Q. Two visits. Would you—I am not sure if I recall the second visit. Would you give us the date of the second visit?

A. The first visit, previously testified to, was with Mr. Huck, in 1951, approximately.

And the second visit was the visit testified to that Mr.

Matthews and I called on Mr. Horst and Mr. Dickenson and the traffic manager.

Q. Thank you.

Mr. Looker, to what extend was it a part of your duties as vice president in charge of sales at Huck to be familiar with the prices sold—prices lockbolts sold for in the field?

[fol. 254] A. Very great extent. It was my duty to be familiar with it.

Q. What did you do to keep yourself familiar with it?

A. I had to tell the customers how much they were.

Q. I mean, what did you do to keep up with the situation? How would you know what lockbolts sold for?

A. I had a current list of all lockbolt prices, both standard and special, which were printed and published at the time, including typewritten or ditto form limited publications price lists, and I kept that up to date and current at all times.

Q. To what extend were lockbolts sold, or discounted from, or reduced from, different from this published price list that you just mentioned?

A. To my memory, no extent.

Q. Did you have any instructions outstanding to your sales people with respect to reporting prices?

A. Yes.

Q. What were those instructions?

A. The sales staff was instructed to advise the customers of the standard published prices for lockbolts, including its company's standard term of sales and to insure that no other agreements were entered into, which deviated from the published price schedule.

Q. Did you have any instructions outstanding to your sales people with respect to Townsend prices?

[fol. 255] Perhaps I might rephrase the question, with your Honor's permission.

In what way, if any, did you have knowledge of Townsend's prices in the field?

A. If the Townsend Company offered for sale any lockbolt device, at any price or at any term varying from those established by Huck, I was promptly advised by the salesmen concerned.

Q. Which salesmen, the Townsend salesmen or the Huck salesmen?

A. The Huck salesmen who were competing for the same business.

Q. How would he learn of the difference?

A. In his normal course of duties, he established relationships with the buyers of these parts, and again in the normal course of duties, he would be told if Townsend Company offered terms, prices and so forth at a more favorable rate than Huck.

Q. Did you ever, in fact, receive such reports from your sales personnel?

A. Yes.

Q. Did those reports indicate any kind of a relationship between the prices of Huck and Townsend?

A. Occasionally, yes.

Q. What kind of relationship did those reports indicate?

A. I am not certain what type of report you are referring to. Are you talking about the normal day to day reports [fol. 256] that our salesmen turned in?

Q. I am referring to the general reports your salesmen send you during the normal course of their activities, as part of their duties?

A. Well, if and when they heard of a condition where the Townsend Company offered its lockbolt products to the market at a more favorable price or term or condition, I was so advised by a sales report, which the salesmen turned in during the normal course of their duties.

Q. Do you have any recollection of such reports?

A. I recall one such report, yes.

Q. During how long a period of time?

A. During the approximate two year period of my employment, during which the license was in effect, there may have been others, I recall one specific occasion.

The Court: When was it? If you recall.

A. No closer than the two year period that we are speaking of, your Honor.

The Court: What two year period are you speaking of?

A. The two year period, approximately two year period of my employment, in which the Huck Company had an effective and existent license with the Townsend Company.

The Court: That would be beginning 19——

A. (Interposing) September, 1954, through August—or [fol. 257] to August, 1956.

Q. (By Mr. Lipson) You can't pin it down any more?

A. I can't pin it down any closer than that, no.

Q. Except for that one instance that you do recall, were you aware of any relationship between the price that Huck charged for lockbolts and the price that Townsend charged for lockbolts?

A. I was aware of the relationship which established that equality of prices, terms and conditions.

Q. Did you say "equality", or did I miss hear you?

A. The equality.

Q. Oh, I am sorry. Mr. Looker, with respect to the Huck Manufacturing Company only, how many separate prices are there for lockbolt devices?

Mr. Haggerty: During what period of time, your Honor?

Q. (By Mr. Lipson) This is limited to the period of time when Mr. Looker was vice president and in charge of sales for Huck.

A. I recall seven such separate price lists covering different types of lockbolt devices.

Q. What was the relationship between these seven, did they come out the same time, or different times, or what did they signify?

A. Well, there were three basic price lists for lockbolt [fol. 258] sales, for shipments from Detroit, and also three basic price lists for lockbolt sales for shipment from our West Coast warehouse, and another price list covering non-standard lockbolt devices, making seven.

I am not certain if I answered your question.

Q. Were there any price differences in these different price lists; price changes?

A. There were changes from time to time, yes, in the normal course of business.

Q. Do you know whether the changes were in any normal direction, were they up or down, or were they mixed?

A. During my period of employment, for lockbolts, I don't ever remember there ever being any price decreases.

Q. Do you remember anything to the opposite?

A. I remember that each price change was an increase.

Q. With respect to any single price list is there just one

price in the price list or there a series of prices, or how are these little bolt-like items actually priced?

A. Now taking one of the three major groups of price lists as an example, the aircraft lockbolt, they are in that price list, they are divided fundamentally into the four major lockbolt diameters offered for sale, and within the four major diameters, the price list is broken down into the two materials offered for sale.

In this case, steel and aluminum.

[fol. 259] And in each of those groups, are broken down to the different head styles and lengths offered for sale, and each of those groups are broken down into quantities between roughly a hundred or two hundred and fifty to a hundred thousand pieces, so each price list was a very detailed document showing in effect the actual price for any quantity of any part number offered for sale.

Q. Mr. Looker, earlier in your testimony you referred to standard and special lockbolts.

Would you explain to the jury the difference between standard and special lockbolts?

A. The standard lockbolts were those devices having the most usual industrial application.

And the special lockbolts were considered those which had only occasional or extremely specialized application.

Now, a new lockbolt product was first considered to be a special and sold as such, until such time as its sale warranted its being placed among the standard ranks.

Q. To what extent were the price lists for standard incorporated—strike that.

To what extent did the price list for standard lockbolts incorporate specials, and vice versa?

A. The prices for special lockbolts were not shown on this standard price list.

[fol. 260] Q. How did the customer learn of these prices?

A. The customers were provided with a printed copy of the applicable price list for his industry or his type of lockbolt, for the standard group.

For the special group, we priced those by quotation.

Q. Mr. Looker, are you familiar with the phrase "lockbolt stump"?

A. I am, yes.

Q. Would you explain to the jury what a lockbolt stump is, as opposed to a lockbolt?

A. Yes. A lockbolt stump is a product that is very much like a lockbolt, except that it has no extending pin tail. It is a bolt-like structure having threads with the same collar.

Now, the collar is squeezed around that bolt-like structure by a sort of conical shape or cone tool which is hammered down over the collar, squeezing the collar material into the little grooves in the pin.

It is different. Very much like a rivet, except that it deforms the malleable collar into the grooves of the stump itself.

Q. Who makes lockbolt stumps?

A. Lockbolt stumps are manufactured by the Huck Manufacturing Company, to my knowledge.

Q. Any other company?

[fol. 261] A. Not to my direct knowledge.

Q. Was there ever any meeting between the Huck Manufacturing Company and Townsend Company, to your knowledge, at which lockbolt stumps were discussed?

A. Yes.

Q. When did this meeting occur?

A. Subsequent to the signing of the lockbolt patent license between the two companies and prior to my leaving the company.

Q. Where did the meeting take place?

A. I am not certain.

Q. Do you recall who was present at the meeting?

A. I do not.

Q. Do you recall the subject matter?

A. I do not. I recall the knowledge that the Huck Company had licensed the Townsend Company for the manufacture and sale of stumps, and I recall seeing our research engineer's office a very large stack of drawings for lockbolt stumps which he told me were for transmittal to the Townsend Company for the stump license, and for the Townsend Company's manufacture of lockbolt stumps.

The details of the negotiation are something that do not stick in my memory in any way.

Q. What is a lockbolt stump used for?

A. It is used in the same type of application where a

[fol. 262] lockbolt is used and where there is not clearance to drive the collar on the pin with the driving tools.

In restricted clearance application.

Q. Who uses it?

A. I don't know who now uses it. I can say that most of the major airplane manufacturers used it during my period of employment with Huck.

Mr. Lipson: Would the reporter mark this document Government's Exhibit No. 19.

(Whereupon, the document was marked Government's Exhibit No. 19, by the reporter, for identification.)

Q. (By Mr. Lipson) Mr. Looker, I show you a document marked Government's Exhibit No. 19. Would you turn to page seven of that exhibit.

Can you identify any of the signatures appearing on page seven of that exhibit?

A. Yes.

Q. Which signatures?

A. I can identify the signature of A. W. Armour, the III.

Q. Mr. Looker, I ask you to turn the document over and look on the reverse side of the blue backing paper. Have you ever seen that particular paper before?

A. Yes, I have.

Q. Under what circumstances?

A. May I correct my answer?

[fol. 263] Q. Yes.

A. I am not certain that I have seen this particular piece of paper before. I have seen similar pieces of paper before, yes.

Q. That was the import of my question.

A. Yes. During my many years' dealings with the firm of Harness, Dickey, and Pierce, I saw their blue backs many times and this is a contract blue back from Harness, Dickey and Pierce.

Q. Does that document purport to bear a date?

A. Dated on the first page, November 1, 1955.

(Whereupon, a document was marked Government's Exhibit No. 20, by the reporter, for identification.)

Mr. Lipson: The reporter has marked as Government's Exhibit No. 21 a document entitled "Stipulation of Testimony by Dante C. Fabiani."

Mr. Haggerty: I have no objection. Do you have any objection, Mr. Pomeroy?

Mr. Pomeroy: I haven't seen it. This is the stipulation we signed yesterday, I believe, but it is marked Exhibit 20, not 21.

Mr. Lipson: I thought I said 20. If I didn't, I misspoke.

Mr. Pomeroy: No.

Mr. Lipson: Mr. Looker, may I have the exhibit you [fol. 264] are examining?

I show 19 to defense counsel for examination and possible objection.

The Court: We will take a ten minute recess.

(At 3:00 o'clock P.M., a recess was taken.)

[fols. 265-269] The Court: You may be seated. You may proceed.

OFFER IN EVIDENCE

Mr. Lipson: Thank you, your Honor. I take it there are no objections to Government Exhibit No. 19? This will be offered less the patched piece of paper which I am now removing, and I understand that there are some marginal notations on this document as well. The marginal notations are not part of the Government's offer.

The Government now offers No. 19.

The Court: Any objection?

Mr. Dickey: No.

Mr. Haggerty: No objection.

Mr. Pomeroy: No objection, your Honor.

The Court: It may be received.

[fol. 270] Q. Thank you. Mr. Looker, does the same sales force at Huck sell stumps as well as lockbolts? When I say stumps, I mean lockbolt stumps?

A. Does it or did it?

Q. At the same time you were Vice President in Charge of Sales?

A. Yes.

Q. Mr. Looker, are you familiar with the firm known as the Pheoll Manufacturing Company?

A. Yes.

Q. When you were Vice President in Charge of Sales for the Huck Manufacturing Company, were you aware of any activity of the Pheoll Manufacturing Company in the lockbolt field?

A. Yes.

Q. How did you receive this information?

A. The information was received from our West Coast sales representatives.

Q. Approximately what date?

A. During 1955, to the best of my memory.

Q. What was the general import of that information you received?

A. It was reported to me that the Pheoll Company had developed and offered for sale a lockbolt device.

Q. And what did you do upon receipt of that information?

A. I advised our company's management of that effect. [fol. 271] Q. Well, who in particular? Whom did you speak with?

A. I don't remember doing it. I remember that the company's management was aware of it after I was, but I don't remember advising them.

Q. Were there any meetings of company personnel to discuss the Pheoll lockbolt?

A. Yes.

Q. Did you attend such meetings?

A. Yes.

Q. About when did they take place, in time?

A. Shortly after we were advised of the threatened entrance of the Pheoll Company into lockbolt manufacturing sale.

Q. Where did these meetings take place?

A. There was one meeting took place in—at the Huck Company in Detroit and in the office of Mr. Benkert.

The Court: How do you spell that Pheoll, for the record.

A. P-h-e-o-double l.

Q. (By Mr. Lipson, continuing): And where did the other meeting take place?

A. There was another meeting that took place in Chicago, I believe at the Chicago Athletic Club.

Q. With respect to the first meeting, do you recall who was present?

A. I recall seeing at that meeting Mr. Armour, Mr. Ben-
[fol. 272] kert, Mr. Brilmyer and possibly others. I have a vague recollection of seeing a group of people there, but those are the ones I specifically remember.

Q. Do you recall the subject matter of that meeting?

Mr. Haggerty: Well, just a moment, your Honor. I think that we should have it fixed with greater certainty the date of that meeting.

The Court: Yes.

Mr. Haggerty: It is all indefinite and nebulous.

Q. (By Mr. Lipson, continuing): Can you give us your best recollection of the time when this meeting in Mr. Benkert's office took place?

A. During the early part of 1955.

The Court: "Early"? Spring, summer, fall?

A. I would just be giving supposition if I said any one of those. I don't know.

Q. (By Mr. Lipson, continuing): Do you have any actual recollection of the meeting, or do you just think this meeting occurred?

A. I recall the meeting specifically.

Q. What was the general subject matter of the meeting?

A. General subject matter was what to do about the Pheoll problem.

Q. Do you recall any of the conversations?

A. Yes, I do.

[fol. 273] Q. Would you relate them to the Jury, saying who said what?

A. In substance, Mr. Brilmyer made the point during that meeting that the Huck Company should license the Pheoll Company for the manufacture and sale of lockbolts.

Q. Did you say anything at that meeting?

A. Yes. I took a contrary position, that we should not.

Q. Did Mr. Armour say anything at that meeting?

A. I don't recall anything specifically he said.

Q. Did Mr. Benkert say anything at that meeting?

A. I don't recall.

Q. Was there any statement made by anyone present at

that meeting about the reasons for or against licensing the Pheoll Manufacturing Company?

A. Yes.

Q. Who said it?

A. I made the point with what I considered to be at the time valid reasons against licensing the Pheoll Company; Mr. Brilmyer made the point, again with argument and again with reasons, for licensing the Pheoll Company. The thing I remember about that meeting was the confrontation that Mr. Brilmyer and I had, taking opposite viewpoints on the subject.

Q. Was there any discussion at that meeting in Mr. Benkert's office about the effect on the Townsend Company?

A. Yes, there was.

[fol. 274] Q. What was that discussion?

A. It was a point that I raised that if we licensed the Pheoll Company, the Townsend Company would be free to charge whatever they saw fit during the—or at the expiration of the two-year licensing period.

Q. Did anybody make any comments on your statements?

A. I don't remember any comment specifically, no.

Q. With respect to this meeting at the Chicago Athletic Club, do you have an approximate time when that occurred?

A. I——

The Court: Was it after this?

A. It was after the meeting in Detroit previously testified to.

The Court: Still within the same year?

A. It may have been within the year or it may have been the beginning of the following year. My memory on time and date of that—of either one of those meetings is just non-existent.

Q. (By Mr. Lipson, continuing): Do you recall who was present at that meeting?

A. I recall that Mr. Armour was there, and that Mr. Benkert was there and that I was there, and that Mr. Sterritt was there, and that a Mr. Mason Phelps, P-h-e-l-p-s, President of the Pheoll Company at the time was there, and an attorney by the name of Charley Lockwood.

Q. Whom did he represent?

[fol. 275] A. The Pheoll Company.

Q. Was this a meeting in connection with some other event that was going on, or was the meeting the only reason for your being there?

A. The meeting was conducted for the purpose of discussing with Pheoll their request for a lockbolt license.

Q. Was there in fact any discussion at that meeting?

A. Yes, there was.

Q. Do you remember any of the discussion?

A. I do.

Q. Would you relate to the Jury what happened, what was said and who said it?

A. Again, I can testify only in substance. The meeting started by Mr. Lockwood, or it could have been Mr. Phelps, I am not sure, but by one of the Pheoll people, requesting a lockbolt license.

Q. Did Mr. Armour say anything to that?

A. I am not certain.

Q. Did anyone representing Huck at that meeting have anything to say after the request?

A. Yes.

Q. Who?

A. Mr. Sterritt said that, or words to the effect that the lockbolt structure—this was not confined just to stumps, now, this was lockbolts, pull-type lockbolts—the lockbolts [fol. 276] —lockbolt structure infringed Huck patent claims to which Mr. Lockwood replied that they did not.

And then, Mr. Sterritt said that there were going to be more patents issued which would—had—were ready to issue, more United States Letters Patent, and that they would definitely infringe, I believe, that patent, and Mr. Lockwood said that he knew nothing about that.

Q. Under those circumstances, did any of the Pheoll people explain why they wanted a license from the Huck Manufacturing Company?

A. Yes. Either Mr. Lockwood or Mr. Phelps, and I am not sure which it was, expressed the—expressed the position that—to the effect that "We don't think there are any patents involved in this thing. We are making or propose to make a product which is outside of the scope of any valid Huck lockbolt patent, but to avoid trouble, to avoid suit, to avoid conflict, we'll take a lockbolt license at this time."

Q. Was there any decision reached on the part of the Huck people at that meeting, whether or not to grant a license to Pheoll?

A. Prior to that, and as discussed in the previous meeting testified to, the position that Huck would take was made, which was that Huck would not license Pheoll at this time, unless they persisted and proceeded in the face of the threat of infringement and proceeded in face of the possibility of the new patent issuing or probability of the new [fol. 277] patent issuing.

Does that answer your question?

Q. Was there any decision made at the meeting in Chicago? Or was it left hanging?

A. I remember no decision.

The Court: Was there ever one?

Mr. Lipson: Your Honor,——

The Court: Go ahead.

Mr. Lipson (Continuing):—I don't want to——

The Court: Go ahead. I am interfering with your idea.

Q. (By Mr. Lipson, continuing): Mr. Looker, what was the position you took with the Brown-Line Corporation when you left the Huck Manufacturing Company? What job did you get?

A. I was President.

Q. What kind of business was Brown-Line engaged in at that time?

A. Brown-Line was, or had been engaged in the manufacture and sale of principally aircraft cargo tie-down devices.

Q. Well, what are these devices? Can you be more specific?

A. They include fittings used to attach aircraft seats to the floor of an airplane; straps used to tie down aircraft cargo, buckles, hooks and various hardware of that nature.

Q. At that time, was it your intention to continue in the same line of business that Brown had been in?

[fol. 278] A. At the time I took over its Presidency?

Q. Yes.

A. No.

Q. What was your intention at that time?

A. My intention was to direct the company's efforts to the manufacture and distribution of special fastening devices.

Q. What kind of—strike that.

While you were President of Brown-Line Corporation, did you procure or have procured any kind of machinery for Brown-Line Corporation?

A. Yes.

Q. What kind of machinery?

A. This is in what period of time?

Q. Well, from the time you came with Brown-Line to this date?

Just the general nature of the machinery is what I want.

A. General Machinery used for the—included milling machines, lathes, screw machines, punch presses, grinders, all types of common factory equipment we have procured.

Q. To what extent is any of this machinery useful in the manufacture of lockbolts or lockbolt parts?

A. The screw machines of our possession are useful in the manufacture of lockbolt collars.

Q. Were they ever used in the manufacture of lockbolt collars?

A. Briefly, yes.

Q. When did this manufacture of lockbolt collars occur by [fol. 279] Brown-Line Corporation?

A. Around September or October of 1958.

Q. Who ordered them?

A. The Boeing Airplane Company of Seattle, Washington.

Q. Did you actually sell these to Boeing?

A. We had a purchase order for the sale of them. The sale was never consummated.

Q. Did you ever receive any kind of payment from Boeing in connection with this?

A. Yes.

Q. May I ask you, Mr. Looker, did Brown-Line Corporation ever ask the Huck Manufacturing Company or anyone associated with the Huck Manufacturing Company for a license in connection with the lockbolt devices?

A. Yes.

Q. When?

A. It asked the Huck Company for a lockbolt license in July or possibly August of 1956, at the first occasion, and subsequently on one or two other occasions.

Q. Has Brown-Line Corporation ever been licensed by the Huck Manufacturing Company?

A. No.

Q. Mr. Looker, are you familiar with a manufacturing firm known as the Olympic Screw & Rivet Company of Downey, California?

A. Yes, I am.

[fol. 280] Q. Do you know what kind of business Olympic is engaged in?

A. Yes.

Q. Will you tell us generally the type of business they are engaged in?

A. They are engaged in the manufacture and distribution of solid rivets and blind rivets.

Q. Do you know the names of the management of that company, the individuals?

A. Some of them, yes.

Q. Do you know the name of the Vice President in Charge of Sales?

A. Yes. I believe that is his title. I know—I know a gentleman who performs that function, and I am not certain if that is his present title.

Q. Who is it?

A. It is a Mr. Edward Stau, S-t-a-u.

Q. Do you know the President of that Corporation?

A. Yes, I do.

Q. What is his name?

A. Samuel Maness, M-a-n-e-double s, I believe.

Q. While you were connected with the Huck Manufacturing Company, did either of these gentlemen ever contact you with respect to a lockbolt license for Olympic?

A. Yes.

Q. On how many occasions?

[fol. 281] A. I know—I remember one specific occasion.

Q. When did this occur and who contacted you?

A. A Mr. — Mr. — Mr. Maness, the company's President.

Q. About what time was this?

A. I don't recall. Mr. Maness on two occasions made this request. One was by letter and the other one was to me verbally.

The Court: Was this during the time of your employment?

A. During the time of my employment.

The Court: With Huck?

A. Yes.

The Court: All right.

Q. (By Mr. Lipson, continuing): Do you recall whether this occurred before or after the Townsend license agreement between Huck—the Townsend lockbolt license agreement between Huck and Townsend?

A. The two events I just referred to both occurred after the lockbolt license agreement between Huck and Townsend.

Q. Where did your conversation with Mr. Maness occur?

A. In Mr. Maness' office in the Downey plant.

Q. In California?

A. Yes.

Q. On any of these occasions, did you ever give an answer to Mr. Maness concerning his request for a license? [fol. 282] A. I don't—I don't recall anything positive about it, no.

Q. Mr. Looker, while you were with Huck Manufacturing Company, did Olympic Screw & Rivet ever get a license to manufacture lockbolts?

A. No.

Q. Are you familiar with a firm known as the Republic Steel Corporation?

A. Yes.

Q. What is the general nature of their business?

A. They are a large steel producer.

Q. They are a very well-known company? Is this the same Republic?

A. I knew them as the Republic Steel Company, yes. They produce steel.

Q. Were you ever contacted by anyone connected with Republic Steel Company, while you were employed by Huck, in connection with a lockbolt license?

A. Yes.

Q. Do you recall about what time this occurred?

A. It occurred after the Huck-Townsend license and before I left the company. I don't remember when.

Q. Do you remember the place of this contact or the manner of the contact?

A. I remember a meeting that was held, a luncheon or a breakfast meeting, and I'm not sure which, which was

[fol. 283] held in this city at the Detroit Athletic Club, with the members of the Huck management and myself and with members of the Republic Steel management.

Q. Do you remember any of the names of the individuals from Republic Steel that you characterize as management?

A. I remember a Mr. Foy, F-o-y.

Q. With what company was he connected?

A. Republic Steel Company.

Q. Do you know what his title is or was at that time?

A. I am not certain.

Q. As to any of the other persons connected with Republic, do you recall who they were?

A. No.

Q. Who were the other persons connected with Huck, besides yourself, who were present?

A. Mr. Armour was there, I believe.

Q. Well, do you recall whether or not there were any other persons?

A. Yes. To the best of my memory, Mr. Armour was there, and I think Mr. Benkert was there, too, but I am not certain of that.

Q. Do you recall the subject matter of the conversation at this gathering?

A. Yes.

Q. Did that concern lockbolts in any respect?

[fol. 284] A. Yes.

Q. Would you tell the members of the Jury what happened, identifying to the best of your recollection who said what?

A. The subject matter was a discussion on the request the Huck Company had for the issuance of a lockbolt patent license to Republic Steel Company. The Huck Company had contacted the Republic Steel Company prior to this meeting for the purpose of determining if they were interested in manufacturing large-diameter lockbolts, that is, lockbolts of such diameter that Huck couldn't make them, themselves, half-inch, three-quarter inch, and other sizes for which Huck at that time had no facilities.

The Republic Steel Company became familiar with the lockbolt fastening device, having received requests for quotation, and these men indicated to me that they had travelled to Detroit to discuss with us not just making

lockbolts on subcontract, for Huck's sale, but making lockbolts under patent license for their own sale.

Q. Was Republic Steel Company ever granted a license to manufacture lockbolts, to your knowledge?

A. Not to my knowledge, no. May I qualify that answer?

Q. Please do.

A. They may have been granted a patent—a license to manufacture lockbolts for Huck on subcontract, but to my knowledge, they were never granted a patent license, which [fols. 285-288] included the sale of that product to others, other than Huck.

* * * * * * *

[fol. 289] Direct Examination. (Continued)

By Mr. Lipson:

Q. Mr. Looker, as a result of your employment with the Huck Manufacturing Company, have you become familiar with the nature of Huck's mailing procedures, its internal [fol. 290] office procedures for mailing letters?

A. Yes.

Q. How did a letter go out from the Huck Manufacturing Company?

A. By United States mail.

Q. Well, what was the internal procedure within the company, supposing someone were to draft a letter?

A. Generally, the person writing the letter dictated it to a stenographer, and the letter was then transcribed by the stenographer, with the stipulated number of copies. The letter and copies were then given to the person having dictated the letter. If all was in order, the person having dictated the letter, signed the letter and gave it back to his secretary or stenographer, and at that time the secretary or stenographer would mail the original and distribute the number of copies, and send the stipulated file copy to that department's files.

Q. Was there any particular color of the file copy?

A. For the letters, the file copy was generally yellow.

Q. What were the colors of the other copies that you referred to?

A. White.

Q. As a general practice in the Huck Manufacturing Company, was there any indication on the file copy as to who wrote the letter?

A. Yes.

[fol. 291] Q. What kind of indication would normally appear on the copies?

A. The person having dictated the letter, the initials were shown in the lower lefthand side, followed by a colon or a slash mark, and then the letters or initials of the secretary or stenographer who transcribed that letter, or memorandum.

Q. Was there any way of identifiying which of the white copies went to which department or person in the Huck Company?

A. Yes.

Q. What means of identification were used?

A. The list of people who were to receive copies were shown the copy sheets, in the case of letters, and on the—and on all copies in case of memoranda, the persons for whom the copy was intended was either encircled or checked by the stenographer at the time that she distributed the copies of that document.

Q. Did anyone, any executive officers of the Huck Manufacturing Company have any kind of a stamp that would indicate receipt of any of their copies?

A. Yes.

Q. Which officers?

A. Mr. Armour had one, for his office in Chicago. Mr. Westrick had one. Mr. Westrick is identified as an employee of the Huck Manufacturing Company, who, at the time I left the employment of the Huck Manufacturing Company, was in charge of the order department of that [fol. 292] company. He had a stamp indicating receipt of mail.

The sales department, itself, had a stamp showing the receipt of mail.

The Court: Will you distinguish one from the other?

Q. (By Mr. Lipson) Yes. Will you describe Mr. Armour's stamp, to the best of your recollection?

A. Yes. Mr. Armour's stamp had an A.W.A., and beneath it was the date of the receipt of the document.

Q. Will you describe—I am sorry.

Would you describe the color of Mr. Armour's stamp, to the best of your recollection?

A. As far as I remember, they are mostly red.

Q. Will you describe the nature of the sales department stamp that you referred to?

A. Yes. The sales department stamp had the words "Sales Department" D-e-p-t, and beneath that was the date again. Rubber stamp date.

Q. Do you recall whether Mr. Benkert had any kind of identifying stamp?

A. I don't recall.

Q. Have you ever had occasion to—while you were with Huck—to see Mr. Armour's handwriting?

A. Yes.

Q. How often?

[fol. 293] A. Probably four or five times a week.

Q. Well, during what periods of time from 1947 through 1956, or during a more limited period?

A. No, primarily during the period 1953 or so on through 1956.

Q. Do you recall, generally, the circumstances under which you would be able to see his handwritten signature?

A. Yes.

Q. What were the circumstances?

A. One of the primary means of communication in the Sales Department at that time was a report which our sales engineers wrote for each important sales call they made, while calling on customers in the field. Those copies —correction, those reports came into the Sales Department, Mr. Armour always received a copy of that report—of each report. Often he wrote notes on them and sent them to me, asking what had been done, or suggesting that things be done for followup purposes, or for action to be taken as a result of the call stipulated on the sales report itself.

This was the most usual means of my having seen Mr. Armour's handwriting.

Q. During the course of time you were employed at Huck, did you ever have occasion to see Mr. Benkert's signature?

A. Yes.

Q. How often?

A. Very frequently.

[fol. 294] Q. Well, how often would that be, approximately?

A. At least twice a month.

Q. On what occasions?

A. He signed my paychecks.

Q. Mr. Looker, at this time I would like to show you Government Exhibits 21, 22, and 23, which have been previously marked by the reporter. Referring to the signatures on each of those three documents can you recognize those signatures?

A. On Government Exhibit No. 21, I recognize the signature of Alfred E. Benkert.

Q. While we are on 21, Mr. Looker, there is a page attached—the second page of 21, do you recognize any of the signatures or writings that appear on that page?

A. You are referring to the second large size page, not the small one?

Q. Yes, I am.

Mr. Lipson: Your Honor, at this time I would like to clarify something.

There is, on the copy that Mr. Looker has, a handwritten note saying "files", which would indicate that this was at one time filed with a Government agency.

I am reluctant to tear it off, because of certain regulations of the agency involved, but that is not considered a part of the document.

Q. (By Mr. Lipson) The second large size page, yes.

[fol. 295] A. I recognize the signature of Alfred E. Benkert, and his initials on the second large page, of Exhibit 21.

Q. On Exhibit 22, do you recognize any of the signatures appearing there?

A. On the first large parge I recognize the signature of Mr. Alfred E. Benkert, as well as on the second page of the same exhibit. And as well as on the third page of the same exhibit.

Q. I am sorry. Did you say the third page of Government Exhibit No. 22?

A. Yes.

Q. May I see your copy of Government Exhibit No. 22?
A. (Handing exhibit to counsel.)

Mr. Lipson: Let the record show that the second page Mr. Looker referred to is merely a carbon copy of the first.

Q. (By Mr. Lipson) With respect to Government Exhibit No. 23, do you recognize any of the signatures?
A. On the first large page, I recognize the signature of Mr. Alfred E. Benkert, as well as on the second large page of the same exhibit.

OFFERS IN EVIDENCE AND OBJECTIONS THERETO

Mr. Lipson: I would like to offer these in at this time. Do you have any objection?
Mr. Haggerty: I would like to see them.
Mr. Lipson: Of course.

[fol. 296] (Whereupon, the exhibits were handed to counsel.)

Mr. Haggerty: May it please the Court, with reference to these pre-proffered exhibits, I object to them as being irrelevant and immaterial to the proceedings now before the Court.
Mr. Lipson: Your Honor, they have no relevance at this time, but I would like to offer them at this time so that they would stand to authenticate other documents, should the need arise.
The Court. All right, we will pass them for the moment, then.
Mr. Lipson: Yes, your Honor.

Q. (By Mr. Lipson) Mr. Looker, I show you a Government exhibit marked 24. Would you examine that exhibit, please?
A. Yes.
Q. Mr. Looker, can you tell me who prepared Government Exhibit No. 24?
A. Yes. I did.
Q. Is there a signature on Government Exhibit No. 24?
A. Yes, there is on page two.
Q. Do you recognize that signature?
A. I do, yes.

Q. Whose signature is it?
A. My own.
Q. Is Government Exhibit No. 24 on any special kind [fol. 297] of letterhead that you recognize?
A. Yes.
Q. What kind of letterhead?
A. It is on a Huck Manufacturing Company's Sales Engineers' Report Form.

Mr. Haggerty: I object to testifying to the content of an exhibit until and unless it has been received in evidence.
Mr. Lipson: Your Honor, we are not offering any testimony at this time about the content of the exhibit, merely trying to——
The Court: (Interposing) I think he is still in the course of identification, are you not?
Mr. Lipson: Yes, your Honor.

Q. (By Mr. Lipson) Does it purport to bear any kind of a stamp?
A. Yes, there are several.
Q. Do you recognize any of the stamps?
A. Yes.
Q. Which stamps?
A. I recognize the stamp——

Mr. Haggerty: (Interposing). Well, now, I object to testifying from the content; we are getting into the content and the subject matter. It is highly improper.
The Court: All right. All right.

[fol. 298] Q. (By Mr. Lipson) Do you recognize any initials that appear on this document?
A. Yes.

Mr. Haggerty: Well, I likewise—may it please the Court, I think it is thoroughly competent if received in evidence to read or to show to the jury, or both, but to testify from it, without its receipt in evidence, as long as it has been identified and it has been identified——
The Court: (Interposing) Are you satisfied that it has been identified?
I think counsel is merely trying to do that.
Mr. Haggerty: He says it was a letter written by the witness Looker, himself.

The Court: All right.

Mr. Haggerty: Which is sufficient identification.

The Court: All right.

Then you may proceed on any other line of interrogation necessary to the offer of proof.

Q. (By Mr. Lipson) Mr. Looker, do you recall writing Government Exhibit No. 24?

A. I don't recall dictating it, no.

Q. I offer—I am sorry, did you have any further comment?

A. I did not, no.

Mr. Lipson: I offer 24 in evidence.

Mr. Haggerty: May we see it?

[fol. 299] Mr. Lipson: Yes.

(Whereupon, the exhibit was handed to counsel.)

Mr. Haggerty: May it please the Court, in reference to the Government's Exhibit No. 24, so marked for identification, we object to it.

It is incompetent, irrelevant and is beyond the period set forth in the Government's indictment which commenced in 1954. This is a matter involving September 4 through 7, 1951, and the contents of it is totally foreign to the subject matter involved in this litigation.

Mr. Lipson: Your Honor, I believe the indictment——

Mr. Haggerty: (Interposing) Would your Honor like to read it?

The Court: I have—they furnished me with copies of it this morning.

Mr. Haggerty: Do you have a copy of it, your Honor? Here it is, Mr. Lipson.

Mr. Lipson: I believe the indictment uses the phrase, at least as early as 1954.

In any event, I think the document is relevant to show the competitive relationship of the two corporations prior to the 1954 formation of what the indictment alleges to be the illegal agreement, and for that purpose alone, it would be relevant.

Mr. Haggerty: What materiality would the competitive [fol. 300] position of the two corporations be, prior to the offenses alleged in the indictment?

Mr. Lipson: The fact that they——

Mr. Haggerty: (Interposing) What materiality or relevancy would that be?

The Court: I think it has materiality and I shall admit it.

Mr. Pomeroy: If the Court please, I should like to object to it also on the further ground that the document is hearsay, if it is offered for the truth of the statements contained in it, and no hearsay statements by this witness in the form of this memorandum should be admitted and binding upon the Defendant Townsend and Dickenson.

The Court: I missed the last part.

Mr. Pomeroy: And that no hearsay statements by this witness, on behalf of the Huck Manufacturing Company, in 1951, should be accepted as binding on the Defendants Townsend and Dickenson.

The Court: You have a point there. Do you have any remark about that?

Mr. Lipson: Yes, your Honor.

Let me first deal with whether or not the subject matter contained is admissible as hearsay. Obviously, it is hearsay; however, it is a part of the two noted exceptions to the hearsay rule, one of which is the admission rule.

[fol. 301] Obviously, Mr. Looker, when he wrote this, was acting in his normal scope of authority.

The Court: You are offering this under the Shop Book Rule, so to speak?

Mr. Lipson: Well, the Shop Book Rule would be the second exception to the hearsay rule, and we offer it under either one of those exceptions to the rule, yes, your Honor.

The Court: Now, the next point he raises is with respect whether or not it may be offered against the Defendants Townsend and——

Mr. Haggerty: (Interposing) Dickenson.

The Court: (Continuing)—Dickenson.

Mr. Lipson: Your Honor, we have already prepared a memorandum of law submitted to your Honor on precisely that subject. I believe counsel for defense has also received copies of that memorandum.

We refer your Honor to that memorandum of law, and with your Honor's permission, I would like to quote from it at this time.

The Court: All right.

Mr. Pomeroy: If the Court please, I don't know whether —I don't know how extensive an argument we are going to get into here.

The Court: I do not know. Just give me the basic——

[fol. 302] Mr. Pomeroy: (Interposing) Or whether we ought to excuse the jury or not.

The Court: You mean as a declaration of a co-conspirator?

Mr. Lipson: Yes, your Honor. The memorandum is entitled "Memorandum of Law and Admissibility of Declarations of Co-Conspirator."

Essentially, the quoted portion of Judge Leahy's opinion appears in that memorandum involving the United States v. Vehicular Parking, and obviously, with greater authority, the language of the United States Supreme Court quoted on page two in that memorandum in the case of the United States v. Gypsum Company, 333 U.S. 364, which was an anti-trust conspiracy case and the rule set down by the Supreme Court in that case quite clearly was that once there has been prima facie evidence of the existence of a conspiracy, the declarations and acts of the various members, even though made or done prior to the adherence of some to the conspiracy, become admissible against all as declarations or acts of co-conspirators in aid of the conspiracy.

The remainder of the memorandum deals with statements made by agents of a corporate co-conspirator which is obviously the only way in which a corporation can act, as through its authorized agents.

Mr. Haggerty: May I—pardon me.

[fol. 303] Mr. Pomeroy: Your Honor, may I reply to that, your Honor?

The Court: Yes.

Mr. Pomeroy: One formulation of this rule that Mr. Looker—Mr. Lipson is relying upon, is that any act or declaration by one co-conspirator committed in furtherance of the conspiracy and during its pendency, is admissible against each co-conspirator, provided that a foundation of its admission is laid by independent proof of the conspiracy.

The Court: In other words, he has quoted a case that says once a prima facie case, that is the pre-requisite.

Mr. Pomeroy: That is the United States Gypsum opinion,

your Honor, as is clearly indicated, and I would respectfully submit that that foundation has not been laid.

Nothing that this witness testified to yesterday, or the day previous, accomplishes that fact. The alleged supplemental agreement, as he called it, was merely an oral extension of a written agreement, if you take it on the terms in which he testified.

And, therefore, there is no foundation for this kind of evidence at this stage of this trial.

Mr. Lipson: Your Honor, with respect to the necessity for statements being in furtherance of the conspiracy, we quote the portion of Judge Leahy's opinion in the Ve-
[fol. 304] hicular Parking case, which appears on page two of the Government's memorandum.

Mr. Haggerty: I call your Honor's attention that that is a District Court case as against the decision of the United States Supreme Court.

Mr. Lipson: I quote:

> "—the admissions of every co-conspirator, whether a party to the cause or not, and regardless of the time of his entrance into the combination, are admissible. His declaration need not be in furtherance of the conspiracy. It suffices if the declarant's statement relates merely to the purposes of the alleged combination."

We have not, your Honor, quoted from the United States v. Imperial Chemicals decision, 100 Fed. Suppl, 507, also an anti-trust case, but it bears out the propositions advanced by Judge Leahy.

Similarly, United States v. E. I. du Pont de Nemours, 107 Fed. Suppl. 324. Which was also an anti-trust conspiracy.

We think the quoted rule from the United States v. U.S. Gypsum Company as set down in the Government's memorandum is definite and establishes the rule under which the admissions of the co-conspirator come in.
[fol. 305] This was clearly a rule making decision by the Supreme Court.

The Court: Well, I shall admit it on the basis that it is material to show the background of the dispute as set forth in your first reason, and the facts that lead up to the initiation of the conspiracy.

And for that reason, as far as this exhibit is concerned, I think it is material to the determining what has happened, and it is of value in determining background, and for the purposes of this ruling that applies to all defendants.

Mr. Lipson: Thank you, your Honor.

Q. (By Mr. Lipson) Mr. Looker, I hand you Government Exhibit No. 24 once more.

Would you read from the portion of that document, the heading, that, is the material preceding paragraph numbered one on that page.

All the material including the printed material, as well as the written and typed material.

A. Yes.

(Reading)

"To: Sales Department
From: R. Looker
Date: September 4, 5, 6, 7, 1951"

The heading above that is "Huck Manufacturing Company Sales Engineer's Report."

[fol. 306] "Company: Consolidated Vultee Aircraft Corporation.

"Street & City, Fort Worth, State Texas.

"Products B36 Aircraft"

and "X by the word personal."

"Distribution——"

Q. You can—with your permission, your Honor, you can skip that remaining portion of the heading which there has been no information.

The Court: How about "distribution"?

Mr. Lipson: Oh, I am sorry. Distribution would be relevant.

A. (Reading)

"Distribution: L. C. Huck",

a checkmark in a box under a column marked information.

"A. W. Armour III,"

a checkmark in a box under the heading information.

"W. J. Westrick,"

a checkmark in the box under the heading information, and initials following.

Q. (By Mr. Lipson) Do you recognize those initials?

A. I do, yes.

Q. Whose are they?

A. These are the initials of Frank A. Dobbe.

Q. Who is Mr. Dobbe?

A. Mr. Dobbe was, at that time, vice president in charge [fol 307] of sales of Huck Manufacturing Company.

Q. Would you continue, please?

A. Yes. (Reading)

"Under the heading Personnel contacted: See Below.

"Details of Sales or Tool Report:

"Marion L. Hicks, Assistant General Manager.
"Jake H. Deitzer, Chief of Materials.
"Henry Jones, Purchasing Agent.
"Charlie Dawson, Patent Attorney.
"Lester Munroe, Executive Assistant.
"Roy Lind, (spelling) L-i-n-d, the letters
"S. A. P. D.
"Ed Kurzava, Group 5—Buying Supervisor.
"Al Higgins, Division Manager.
"J. E. MacBride, Rivet Tooling.
"Jack Fain, General Foreman #46.
"Ed Faulkner, General Foreman #45."

Q. Before you continue, may I ask you if you know with what companies those persons are associated?

A. Each of the people listed above were employees of the Consolidated Vultee Aircraft Corporation.

Q. Would you read paragraph number one of Government Exhibit No. 24?

A. Yes. (Reading)

"Paragraph Number One:

[fol. 308] "On the morning of September 4, 1951, the writer together with Messrs. Huck, and Unfried met with Messrs. Hicks, Deitzer, Jones, and Dawson. Mr. Hicks, representing management at that meeting, stated that it was not the policy of Convair to infringe or encourage the infringement of patents. He stated that Convair regretted the unfortunate incident that

Cherry Lockbolts had been purchased, and that the problems to be solved were namely to keep production going, and also decide what to do with the Cherry Lockbolts."

Q. May I ask you at this time what the—whether you know what Cherry Lockbolts mean?

A. Yes.

Q. What are Cherry Lockbolts?

A. Cherry Lockbolts refer to a lockbolt manufactured by the Cherry Division of the Townsend Company.

* * * * * * *

[fol. 309] Mr. Lipson: Your Honor, at this time the Government would like to show counsel Government Exhibit [fol. 310] marked 25 for examination, and possible objection.

Mr. Dickey: Have you offered this in evidence?

Mr. Lipson: Preparing to offer it in evidence, Mr. Dickey, yes, sir.

Mr. Dickey: Well, I have some objections when you do it.

The Court: All right, let me hear them.

Mr. Lipson: I believe the Judge asked——

The Court: (Interposing) Let me hear them.

Mr. Dickey: Yes.

I object to the admission in evidence of Exhibit 25, which is a notice of appeal in a suit named in the exhibit, unless the judgment in the case to which this exhibit refers, is also produced in evidence.

It has no meaning without the judgment.

Mr. Lipson: Your Honor.

The Court: Yes.

Mr. Lipson: There has already been testimony about what the judgment was. The fact that Huck and Townsend had a lawsuit and Huck won.

If there is any serious doubt as to the appeal from that lawsuit, we can admit the opinion of the Court, but, frankly, we see no purpose doing it.

That's why we are not doing it.

The Court: I was wondering why the appeal—there has [fol. 311] been no dispute with respect to an appeal where

Mr. Lipson: (Interposing) We would like to establish firmly, as far as dates are concerned, your Honor, the fact of appeal and the dates appealed.

The Court: It may be received for the dates only, otherwise it is excess.

Mr. Lipson: Thank you.

Your Honor, with your permission, could I summarize the date of appeal, without asking the witness further questions?

The Court: Yes.

Mr. Lipson: Notice of Appeal——

The Court: (Interposing) This is respect to the——

Mr. Lipson: (Interposing) The Huck-Townsend Patent Suit.

The Court: All right. That has heretofore been testified by this witness?

Mr. Lipson: Yes.

The Court: Go ahead.

Mr. Lipson: Dated the 27th day of May, 1953. Filed by the Clerk, May 27, 1953.

Q. (By Mr. Lipson) Mr. Looker, I show you Government's Exhibit marked No. 26, would you examine No. 26, please?

The Court: I take it, defense counsel has had an opportunity to examine this over the recess from last night, all [fol. 312] those proposed exhibits, am I correct?

Mr. Lipson: Yes, your Honor. The exhibits were—with minor exceptions, the exhibits have been in defense counsel's possession in some cases months and in some cases several months.

Yesterday, after the termination of the court proceedings, we identified the exhibits we expected to enter today more definitely than we had previously.

The Court: All right. Now they have each been marked as you propose to offer them?

Mr. Lipson: Your Honor, some of them we won't offer. I might say that.

Not every exhibit that is marked, because some are duplicates.

The Court: I was wondering whether or not we could save time with the objections and determine which and

what kind of objections we are going to have to them, whether or not they should be admitted as a group or in their entirety, and are they based on the same reasons defense counsel, that you have heretofore given to exhibit 24, for example?

That being—it was admitted on the basis of a business record properly kept in the course of business.

Mr. Haggerty: Well, we don't think we could be confined to that, your Honor.

[fol. 313] The Court: No, I say I admitted it on that basis.

Mr. Haggerty: Yes, you admitted it on that basis.

The Court: Now, are your objections—what I am trying to avoid is each exhibit being offered separately with the same delay in time.

Now if the same objections, and I do not want any of your rights eliminated in the objection to the exhibits, but I was trying to save time so we do not—are not here offering exhibits all day long.

Mr. Pomeroy: Well, if the Court please, we would have the same objections to all of these exhibits prior to the period covered by the indictment, insofar as they are Huck documents as distinguished from Townsend documents.

The Court: Townsend documents.

Mr. Pomeroy: And all these appear to be of that variety, and because we think that being hearsay they do not come within any accepted definition—accepted exception to the hearsay rule. Particularly the so-called co-conspirator declaration rule.

There may be some other specific exceptions—objections to other specific exhibits, but those are the main points that we would take concerning this group, your Honor.

The Court: You, too, Mr. Haggerty?

[fol. 314] Mr. Haggerty: Well, your Honor, it is difficult——

The Court: (Interposing) I mean, are you going to repeat the same objection? I would like to see each one as they are offered.

Mr. Haggerty: Well, I don't want to be bound at this time to state whether I would or would not, your Honor, because I would say that that objection, yes, but there may be additional objections.

The Court: All right. Go ahead.

Q. (By Mr. Lipson) Have you examined Government Exhibit 26, Mr. Looker?

A. Yes, I have.

Q. Is there a signature on that exhibit?

A. There is an initial.

Q. Whose initial is it?

A. It is my own.

Q. Do you recognize the letterhead?

A. I do.

Q. What kind of a letterhead is it?

A. The usual Huck Manufacturing Company interdepartmental correspondence form.

Q. Are there any initials indicating who drafted the document?

A. Yes, there are.

Q. Who would have drafted that document?

A. The initials indicate that I drafted the document.

[fol. 315] Q. Does the document purport to bear a date?

A. It does.

Q. What date?

A. February 3, 1953.

Mr. Lipson: Your Honor, at this time I offer Government Exhibit No. 26.

Mr. Pomeroy: Is this offered, if I may ask, as proof of the fact that Mr. Looker wrote this memorandum or dictated it on February 3, 1953, or is it offered as proof of the contents of the memorandum?

Mr. Lipson: It is offered for the latter purpose, your Honor.

Mr. Pomeroy: We would object to it more specifically for that reason—as offered for that latter purpose, on the ground, your Honor, that no basis has been laid, as I said before, no connotation made, therefore it appears to be sort of a boot strap operation, if I may say so.

The Court: Well, this has already been testified to in substance.

Am I right?

Mr. Lipson: That is one of the reasons it is being admitted for, your Honor—offered for, I am sorry, your Honor.

Mr. Looker was—from what he has testified previously—intimately involved in the agreements and arrangements [fols. 316-318] among the two companies, and I think it encumbent upon the Govenment in a case of this nature to establish corroborative evidence of Mr. Looker's oral testimony.

This is being offered to prove the truth of the matters inserted therein, and in order to corroborate the testimony already given by Mr. Looker earlier in these proceedings, it is a relevant, contemporaneous document.

It is also being offered, incidentally, for the purpose of showing knowledge by one of the individual defendants in this case. I think that will come out when the document is admitted.

The Court: All right, any additional objections?

Mr. Haggerty: Yes, your Honor, we object to it, as it is prior to the first date set forth in the information.

The Court: All right. You both have——

Mr. Haggerty: (Interposing) Which is very liberal in its terms beyond the statute as it stands.

The Court: It may be admitted.

* * * * * * *

[fol. 319] Q. Does there appear on this Government Exhibit No. 26 any rubber stamp impressions?

A. Yes.

Q. What are they?

A. The first one in the upper lefthand corner are the initials E. B. S. and the date February 4, 1953.

Q. Do you know who E. B. S. is?

A. I do not.

Q. Are there any others?

A. Yes, in the upper right hand corner is the rubber stamp bearing the initials A. W. A. and the Roman numeral III, with the date February 4, 1953. And below that a [fol. 320] red rubber stamp with the initials A. W. A. and the date below, February 4, 1953.

Q. Is this the kind of stamp you have previously testified to? Strike that.

Do you recognize that stamp?

A. The stamp bearing the initials A. W. A.?

Q. Yes.

A. Yes, I do.
Q. Whose is it?
A. Mr. Armour's.
Q. Thank you, Mr. Looker.

Mr. Looker, I show you a document marked Government Exhibit No. 27, will you please examine 27?

A. Yes. May I ask a question?

The Court: Go ahead.

Q. (By Mr. Lipson) Yes.
A. Would you ask me to examine these, do you want to read them thoroughly to become familiar with them or merely—it will take about a half an hour.
Q. I would like you to read them to become familiar with them, because I would like to ask you a question or two about it afterwards.

The Court: Let's see if we cannot do without it first, because he might know the answer and you can refer to what you want in the memorandum, provided it is admitted.
[fol. 321] Mr. Lipson: Thank you, your Honor.

Q. (by Mr. Lipson) Mr. Looker, does Government Exhibit No. 27 purport to bear any signature?
A. It does, yes.
Q. On the third——

Mr. Haggerty: (Interposing) Your Honor, we might show him this by this formality of proof if he will—he has served us copies of it—if he will simply offer it for examination after the witness has examined it, I think we can shorten this considerably.
The Court: Fine.
Mr. Lipson: That's what I think the Judge asked previously.
The Court: No, I had reference to the objections. Go ahead.
Mr. Lipson: I show 27 to counsel for the defense.
Mr. Haggerty: Now, may it please the Court, in reference to the tendered exhibit, as far as the letter that is written by Mr. Looker, or as is called factors relating to the establishment of a second source, and so forth, the only objection

that I have as to that is that it is beyond the statute of limitations.

But, attached to it are, which did not appear on what we have received, we have it, but they are separate exhibits.

[fol. 322] One is a letter of April 11, '51. There is a letter in very rough draft of a patent—patent license agreement, and then there is a second letter of February 21, 1951, and attached is Huck's patent relating to Lockbolts, which I do not think is part of this exhibit, and if offered, should be offered separately.

Has your Honor an accurate copy of the exhibit?

Mr. Lipson: May I take another look at the document, Mr. Haggerty?

It is a little difficult to follow.

Mr. Haggerty: Yes, you have a lot of documents attached thereto.

The Court: After the memo, there is, in my copy, a letter from counsel dated April 11th.

Mr. Haggerty: What year?

The Court: 1951.

Mr. Lipson: Mr. Haggerty, I——

Mr. Haggerty: (Interposing) And this is dated May 4, 1954.

Mr. Lipson: The list of patents I can't find on the documents that you refer to.

Mr. Haggerty: Here. Huck patents relating to lockbolts. There is a description of it here.

Mr. Dickey: You have four different documents.

Mr. Haggerty: You have four different documents.

[fol. 323] Mr. Lipson: That is part of the letter, it isn't a separate list. I thought you were referring to a separate list.

Mr. Haggerty: No. No.

The Court: And then a letter dated April 11, 1951; a letter dated February 21, 1951, both from the same counsel, and the attachments that were to that letter.

Mr. Lipson: Your Honor, can I say something on this matter?

The Court: Yes.

Mr. Lipson: On the second page of the three page memorandum which Mr. Haggerty has no objection, on the—

well, the second full paragraph at the bottom, there is a reference to other letters.

The Court: What are you reading from?

Mr. Lipson: The paragraph beginning with "factors relating to".

The Court: All right.

Mr. Lipson: And those other letters were obviously appended to and part of this document written by Mr. Looker that Mr. Haggerty probably has no objection to.

Therefore, in order to submit a complete document, the others are attached. In addition to the nature, the physical nature of presentaiton, I might say this is precisely the matter in which the Government obtained these documents, [fol. 324] they were attached at that time.

The Court: Well, that does not make these admissible, certainly.

Mr. Lipson: No, I just wanted to explain the fact of physical attachment.

The Court: What are you particularily interested——

Mr. Lipson: (Interposing) In the secondary documents, your Honor?

The Court: Yes, if any.

Mr. Lipson: Yes, your Honor.

Particular interest is on page one of the April 11, 1951, letter, particularly with respect to the marginal notation—the handwritten marginal notation appearing on the right-hand corner. The lower righthand corner of the document.

In connection, I might say, your Honor, with the various stamps and other indications of the passing of this document that appear on the upper righthand corner.

The Court: All right.

Mr. Lipson: I might say at this time, other than that, and the fact that they tend to—they are reference documents, I have no other point in having them in.

The Court: All right.

Now may I hear your objection, if any?

Mr. Haggerty: Well, may it please the Court, in refer- [fol. 325] ence to the letter of April 11, 1951, it is dated 11, '51, which is prior to the date set forth in the indictment; beyond the statute of limitations.

It is incompetent and irrelevant to the issues here, because this is back in '51, was a letter addressed to the Ex-

ecutive Vice President of the company by its patent counsel, to the effect of a proposed outline of the license, what one should be, but it was never effectuated and it is absolutely superfluous and does not show any intent.

Mr. Lipson: Your Honor—are you finished, Mr. Haggerty?

Mr. Haggerty: Yes.

Mr. Lipson: Your Honor, I think it would be admitted for the purposes already decided by the Court.

The Court: It has some probative value towards——

Mr. Lipson: (Interposing) In addition to that——

The Court: (Interposing) Let me finish. I am ruling with you, so do not continue.

Mr. Lipson: Thank you, your Honor.

The Court: I am satisfied it has some probative value towards the background material in this matter, and for the same ruling as heretofore made it may be admitted.

Mr. Pomeroy: If the Court please, I would just like to add my objection, of record, in addition to those previously [fol. 326] made, to object especially to any binding effect of any marginal notations on Defendants Townsend and Dickenson.

The Court: Except—well, we will see what it has to say. Again, it is only evidence of Huck, it is not any evidence here, nor it there any reference or any admissions in here that should be—well, they speak for themselves, I do not want to determine what the jury—I better keep still.

Mr. Haggerty: Was your Honor's ruling that the letter of April 11th is in evidence.

How about the rest of the subject matters attached to it?

The Court: I see no materiality to all that.

Mr. Lipson: There is no purpose in bringing that to the jury's attention, with the exception possibly of the signature.

The Court: Except for what?

Mr. Lipson: The signature. The indication of the signature on the April 11, 1951, letter, that is all.

The Court: I do not quite follow you.

Mr. Lipson: To establish who wrote the letter.

The Court: Oh, I see.

Mr. Lipson: That is all.

[fols. 327-333] The Court: All right. I do not think it is objected to on the basis of not being genuine.

Mr. Lipson: No, you asked what I wanted to bring out.

The Court: Why you wanted to—all right, then.

Q. (By Mr. Lipson) Mr. Looker, would you—Mr. Looker?

A. Yes.

Q. Would you read this document from the beginning word "factors" to the bottom of page three?

A. (Reading)

> "Factors relating to the establishment of a second source for Huckbolt Manufacture by License agreement.
>
> "The following is a pro and con discussion relating to any Huckbolt license agreement which we now contemplate or may contemplate in the future and is noted herewith in response to Mr. A. W. Armour's request of May 3."

Q. May I interrupt you for a moment. Would you tell us what a Huckbolt is?

A. A Huckbolt is—or was—Huck's terminology for the word "Lockbolt".

Q. Would you continue to read the document, please?

A. Yes.

. . . . . .

[fol. 334] Q. (By Mr. Lipson) There is more to that page, Mr. Looker, would you continue reading?

A. A date stamp, February 4, 1954——

The Court: (Interposing) May 4.

A. May 4, 1954, and a handwritten note, "Sales Policies the same—F.O.B. point etc."

Q. (By Mr. Lipson) Do you recognize the handwriting of that handwritten note?

A. I do.

Q. Whose it is?

A. That is my own.

Q. Is there any distribution list of this document?

A. There is.

Q. In whose hand is the distribution list written?

A. It is in my own.

Q. Would you read the names of the persons?

A. Yes. On page one of the exhibit, upper righthand corner are words "Armour, Benkert, Dobbe, Reynolds, Stern and Looker."

[fol. 335] Q. I believe we have identified all except Mr. Reynolds and Mr. Stern, will you tell us who they are?

A. Yes. Mr. Reynolds was at the time a director of the company, and its Certified Public Accountant, and Mr. Stern at the time was a director, and I believe Secretary of the corporation, and the company's general counsel.

Q. Are either of those gentlemen in the court room?

A. They are both in this court room, yes.

Q. Mr. Looker, would you now turn to the first page of the April 11, 1951, letter which is part of Government Exhibit No. 27.

Do you recognize the letter head of that?

A. I do.

Q. Whose letterhead is it?

A. It is the letterhead of Harness, Dickey and Pierce.

Q. And is that the same firm you previously identified?

A. Yes, it is.

Q. Are there any stamps on the upper marginal section of that first page of that letter?

A. Yes, there are.

Q. Would you say—tell us what those stamps are?

A. Yes. In the upper lefthand corner is the date stamp with the initials M. V. C., April 12, 1951.

Q. Can you identify that stamp?

A. I cannot.

[fol. 336] Q. Are there any other stamps on the righthand section?

A. Yes, in the upper righthand corner is a date stamp with the initials A.W.A. and the Roman numeral III, and the date April 12, 1951, with a second date stamp below and to the left, with the initials A.W.A., and the date below April 15, 1951.

Q. Are there any other handwritten notations of similar import?

A. I don't know what you mean. Oh, yes, there is in the upper righthand corner of page one of this document, the letters A.E.B., followed by the numbers 3-2-54.

Q. Do you recognize the handwriting?

A. I do not.

Q. Is there anything done with that notation?

A. It has been encircled.

Q. Do you recognize the handwriting of any of the written notations appearing on the upper righthand section of that page?

A. The handwriting you refer to appears to have been scratched out and I don't recognize it.

Q. Directing your attention to the lower righthand section of the page, do you recognize that handwriting?

A. I do, yes.

Q. Would you read from the April 11, 1951, letter, the paragraph, the lower half of the page beginning with the [fol. 337] three words "the two most" and ending the very last word on the page, the typewritten portion?

A. Yes.

(Reading):

> "The two most important provisions in any patent license agreement are: A. the granting clause and B. the royalty clause. I have prepared an outline of various factors and proposals that should be considered by the Huck management under these two clauses and the unified position currently determined prior to the Townsend meeting.
>
> "A. Granting clause——
>
> "1. A straight, unrestricted, non-exclusive license to Townsend to manufacture, use and sell lockbolt constructions under the Huck patents.
>
> "2. The same as 1 plus a provision that Huck's improvements will be included.
>
> "3. The same as 1 plus an agreement that Huck will not grant licenses to others."

Q. At this point, Mr. Looker, can you identify the author of the handwritten notation opposite the last items that you just read?

A. I can, yes.

[fol. 338] Q. Whose handwriting is it?

A. It is the handwriting of Mr. A. Watson Armour.

Q. Will you read that notation?

A. Yes.

(Reading):

"Not in writing—agreed for period of three years in writing."

And there is a question mark to the left and above the word "agreed".

Q. Turning to the last page of that letter, will you just tell me who signed it?

A. Mr. John C. Sterritt.

Q. Have you previously identified who Mr. Sterritt is? Well, would you please identify him, who Mr. Sterritt is?

A. Mr. Sterritt was the patent counsel of Huck Manufacturing Company and the member of the firm of Harness, Dickey, and Pierce.

Q. Thank you, Mr. Looker.

Mr. Pomeroy: May I see a copy of that, please?

Mr. Lipson: The copy, or the original?

Mr. Pomeroy: The original of that.

Mr. Lipson: Sure.

Mr. Pomeroy: I am not sure our copy is the same in all respects. Excuse me, your Honor.

The Court: That is all right.

[fol. 339] Mr. Lipson: May I say something to Mr. Pomeroy, off the record?

(Whereupon, an off the record discussion was had.)

Mr. Lipson: I show Government's Exhibit marked——

Mr. Pomeroy: (Interposing) Excuse me just a minute.

Mr. Lipson: I am sorry.

Mr. Pomeroy: I might say, for the record, that Mr. Lipson furnished me a new copy of this exhibit, which seems to be the same as the original that has been offered.

Mr. Lipson: Thank you. It was an inadvertent error. In sending it to the photo shop, some material was covered, it was corrected the second time around.

I show Government Exhibit No. 28 to defense counsel for examination and possible objection.

The Court: I think we better take a break here.

Mr. Lipson: Yes, sir.

The Court: Ten minutes.

(Whereupon, at 10:50 o'clock A.M., a recess was had.)

[fol. 340] The Court: Are you ready?

Mr. Lipson: The defendants are examining GX28.

The Court: You know, when you get with the Government you find out all kinds of short abbreviations, and we now have a new abbreviation I hadn't run across or heard of before, GX, Government exhibit, that is pretty good.

Mr. Haggerty: Eventually they will exhaust that alphabet.

Objection for the record, may it please the Court, that the tendered Exhibit No. 28 is beyond the period, beyond the Statute of Limitations.

The Court: Mr. Pomeroy?

Mr. Pomeroy: If the Court please, this would come within the scope of my prior objection, and rather than repeat them in detail I will let it go at that, if that is agreeable with your Honor.

The Court: As long as you reserve your objection.

It may be admitted for the same reasoning heretofore given. I will adopt the same procedure.

Q. (By Mr. Lipson, continuing): Mr. Looker, I show you Government's Exhibit No. 28. I ask you, Mr. Looker, to read that entire one-page document, starting at the [fol. 341] very top, including the printed material.

A. "Huch Manufacturing Company
"Departmental Correspondence
"Date, May 5, 1954.
"Subject, Discussion on Lockbolt Patent License
"To, A. W. Armour, Copies A. E. Benkert, F. A. Dobbe, H. Brilmyer, J. Orloff, A. Stern, J. Sterritt, P. Reynolds, File
"The following is a quick resume of points relating to future discussion for a lockbolt license."

Q. Mr. Looker, I believe you omitted something from the very top portion after the word "from".

A. Correction, "From R. Looker".

Q. One other point, Mr. Looker, is there anything other than Mr. Armour's name appearing where you read it?

A. Yes, Mr. Armour's name has been encircled in blue ink.

Q. What does that signify?

A. It signifies that Mr. Armour was sent this copy.
Q. Would you continue reading the document?
A. Yes.

"I. We should proceed with issuing a lockbolt license.
"II. We should offer a lockbolt license to Townsend under the following general conditions:
"A. That Townsend agrees to manufacture and make available to industry lockbolts 5/16" in diameter through at least 5/8"."

[fol. 342] The 5/8" has been crossed out and the "1/2" written in to the right, followed by an arrow pointing to the words, "Research on 5/8 to be done later".

Q. Do you recognize the handwriting?
A. I do, yes.
Q. Whose is it?
A. Mr. Armour's handwriting.
Would you continue?

A. Paragraph "B. That lockbolts be manufactured and distributed by Townsend—not Cherry.

"C. That lockbolts and collars be suitably identified to prevent field mixing.
"D. That the license be cancellable if Townsend inferior quality hurts Huck."

Adjacent to that sentence, to the right, is a mark, a question mark encircled and the letters "CK", written thereafter.

"E. That Huck give Townsend manufacturing drawings and specifications for lockbolts and collars.
"F. License to be non-exclusive.
"G. Royalties. Commercial business—7½%. Aircraft—5%.
"H. That we should determine Townsend's machinery and equipment now available for lockbolt manufacture on through 5/8" in diameter."

The "5/8" has been underlined.

[fol. 343] "III. Points not fully discussed.
"A. Should Townsend sell lockbolts or Huckbolts."

The word "lockbolts" has been crossed out, and the word "Huckbolts" has been underlined in red pencil.

"B. Price maintenance provisions.
"C. Minimum royalties.
"D. Improvements."

The word, handwritten word paren clause paren has been put in.

"E. Termination. (Life of patent)
"F. Favored license clause."

Under that the letter "G" has been written in red pencil.

"Very best regards, "R. Looker."

The memorandum has been initialled in the lower left-hand corner of the document with the letters RL:rm.

Q. Are there any handwritten notations on the right hand corner, lower right hand corner?

A. Yes.

Q. What are they?

A. The words, "Meeting John Sterritt 5-6-54".

Q. Do you recognize that handwriting?

A. I do, yes.

[fol. 344] Q. Whose is it?

A. Mr. Armour's.

Mr. Lipson: Thank you.

The Court: How about the handwriting under Paragraph 3, do you recognize that handwriting?

A. I do, yes.

The Court: And whose is that?

A. That is Mr. Armour's as well.

The Court: All right.

Mr. Lipson: Thank you, Mr. Looker.

Mr. Dickey: Mr. Lipson, may I have the witness look at the signature above the 5-6-54 in that Exhibit 28?

Mr. Lipson: Let me get a copy.

I am afraid I don't understand your point, Mr. Dickey.

Mr. Dickey: Well, there is some signature or initials under the legend 5-6-54.

Mr. Lipson: I am willing to bring that out, your Honor, but in that condition I'd like to move into evidence Government Exhibits 21, 22, and 23, earlier identified.

The Court: Well, maybe we can agree. Go ahead, let's see, he has asked for it, so can you identify the signature or the initials?

[fol. 345] A. May I see the document?

Mr. Lipson: Your Honor——

The Court: Let's see if he can do it.

A. You are referring to the initials on the lower right hand corner of the document?

Mr. Dickey: Yes, I am.

A. Those are the initials of Alfred E. Benkert.

Mr. Lipson: Your Honor, at this time I would like to show how those initials ever came there, that is the purpose for moving in 21, 22 and 23.

The Court: You mean you would compare signatures?

Mr. Lipson: No, your Honor, the contents of these affidavits, that is 21, 22, 23 explain how Mr. Benkert's initials were placed, and determines the time that Mr. Benkert's initials were placed on that document.

The Court: I think I understand it. Do you understand how they happen to be placed there?

Mr. Dickey: Merely as an identification of the document at the time it was furnshed the Government under subpoena.

Mr. Lipson: Right, and it has nothing to do at all with the handwriting notations by Mr. Looker, that is why I moved these three affidavits into evidence in order to establish that conclusively.

[fol. 346] The Court: I don't think there is any dispute about that.

Mr. Haggerty: There is no dispute about it, no controversy about it.

Mr. Lipson: As long as it is understood how those initials came there, and it has no relationship to the document itself.

The Court: All right.

Mr. Lipson: I now show Goverhment Exhibit No. 29 to defense counsel for examination and possible objection.

The Court: Has it been examined?

Mr. Haggerty: How was that, your Honor?

The Court: Has it been examined, have you examined it?

Mr. Haggerty: Yes, your Honor. Is that a duplicate of 27?

Mr. Lipson: It is: The contents of the document is a substantial duplicate of the earlier Exhibit No. 27. The first three pages of 27, and this is merely being introduced for the additional marginal notations that appear in the upper margin of the first page, and on the right hand—strike that—the left hand margin of the first page.

Mr. Haggerty: The left hand margin of the first page?

[fol. 347] Mr. Lipson: The left.

The Court: I see nothing on my left hand margin.

Mr. Lipson: The right hand margin, I am sorry, the distribution list I meant, your Honor.

The Court: Merely introduced to show that. The exhibit is identical with, what is the other number?

Mr. Lipson: I believe it was 27, your Honor.

The Court: 27.

Mr. Haggerty: For the purposes of the record we object, may it please the Court, it is not within the period of the Statute of Limitations.

The Court: The same as before. Mr. Pomeroy?

Mr. Pomeroy: Same objection, your Honor.

The Court: Same thing. All right, it may be admitted.

Q. (By Mr. Lipson, continuing): Mr. Looker, I show you Government's Exhibit No. 29, is that the same exhibit you just finished reading previously to the jury?

A. Yes, it appears to be a ribbon copy of the Exhibit 27, yes.

Q. What was the title of that so it might refresh the recollection of the jury, and I won't have to read the entire thing?

A. "Factors relating to the establishment of a second [fol. 348] source for Huckbolt manufacture by license agreement."

Q. Are there any written notations that appear on the right hand margin, the right hand margin?

A. Yes, there are.

Q. Do you recognize the handwriting?

A. I do.

Q. Whose handwriting?

A. It is my own.

Q. What are the notations?

A. The notation was the word "Armour," it is written and encircled.

Q. What does that signify?

A. It indicates that the copy, that this copy was intended for distribution to Mr. Armour.

Q. And what are the others?

A. Below that the word, "Benkert, Dobbe, Reynolds, Looker, and Stern".

Q. Is there any writing on the upper margin of this document, the first page?

A. Yes.

Q. Do you recognize the handwriting?

A. I do.

Q. Whose handwriting?

A. Mr. Armour's.

Q. Would you read the notation itself?

[fol. 349] A. Yes, "Meeting held 5-5-54, Orloff-FAD-Bril-RL-AEB & AWA".

Q. Do you know who "FAD" is?

A. Yes.

Q. Would you tell that to the Jury?

A. Frank A. Dobbe.

Q. And Bril?

A. Is a man by the name of Harold Brilmeyer.

Q. RL?

A. Myself.

Q. AEB?

A. Mr. Benkert.

Q. And AWA?

A. Mr. Armour.

Mr. Lipson: Thank you, Mr. Looker.

I show Government Exhibit No. 30 to the defense counsel for examination and possible objection.

Mr. Haggerty: For the purpose of the record an objection is noted because it is not within the period of the Statute of Limitations.

The Court: Mr. Pomeroy?

Mr. Pomeroy: Same objection as previously, your Honor.

The Court: It may be received.

Q. (By Mr. Lipson, continuing): Mr. Looker, I show you Government's Exhibit No. 30. Would you read that one-

[fol. 350] page document from the very top including the printed material?

A. Yes. "Huck Manufacturing Company
"Departmental Correspondence
"Date, June 23, 1954
"Subject, Townsend Company
"To, A. W. Armour and A. E. Benkert Copies Sterritt",

encircled, and the word "File

"From, R. Looker
"As you know, I met with John Sterritt Tuesday last to discuss the Townsend and Illinois Tool Agreements. John's final draft of June 22 on the Townsend agreement appears to be the final draft and he will be ready to send same along to Johnson just as soon as he gets concurrence from us.
"I have read the agreement over and it appears to be very good and most favorable for both Townsend and Huck. If we may have your concurrence, we would like to proceed.

"Very best regards, "R. Looker."

Q. Is there any stamp appearing on this document?
A. There is, yes.
Q. Do you remember the stamps?
A. I do.
Q. What are they?
A. It is the stamp of—at the lower right hand corner of the document is the stamp used by the firm, Harness, [fol. 351] Dickey and Pierce to indicate receipt of mail.
Q. Do you mean the left hand corner?
A. Correction, left hand corner.
Q. Are you familiar with the stamp on the right hand corner?
A. Yes, the stamp on the right hand corner is the stamp used by Harness, Dickey and Pierce to indicate distribution of mail.
Q. Is there any notations, any particular initials that you can recognize?
A. Yes, on the stamp on the right hand corner of the document the letters J. C. S. have been checked both on the left and on the right.

Q. What does that signify and who is J. C. S.?

A. J. C. S. is John C. Sterritt.

Q. And what do the checks indicate? Do you know what the check marks indicate?

A. I can testify that it appears to me they indicate that he had received this document.

Q. Well, I won't ask you that.

Mr. Haggerty: I ask that it be stricken then.

The Court: It may be stricken.

Mr. Lipson: Your Honor, I show defense counsel Government Exhibit No. 33 for examination and possible objection.

[fol. 352] The Court: Thirty-three?

Mr. Lipson: We are skipping some because I think they would merely be repetitive.

The Court: For the Court Reporter, so we don't have to change numbers again, we will skip Exhibit 31 and 32.

Mr. Haggerty: For the purpose of the record may it please the Court, we object to it as not being within the period of the Statute of Limitations.

Mr. Pomeroy: I would have my original objection to this document, your Honor.

The Court: All right, it may be received.

Mr. Lipson: With your permission, your Honor, may I read the relevant portions of this document?

The Court: All right.

Mr. Lipson: Title, "United States District Court for the Ninth Circuit, Townsend Company, Appellant, versus Huck Manufacturing Company, Appellee. Stipulation to dismiss.

"Appellant and Appellee in the above-entitled appeal, by their respective attorneys, hereby agree and stipulate that the above appeal be dismissed without costs to either party, both with respect to appeal costs and District Court costs," the date that appears is September the 17th, 1954.

[fol. 353] The Court: All right.

Mr. Lipson: I show counsel for the defendants, Government Exhibit No. 34 for examination and possible objection.

Mr. Haggerty: For the purpose of the record, object to the offer of Exhibit 34 because it is not within the period

of the Statute of Limitations, and I think further that it is irrelevant and immaterial.

Mr. Pomeroy: Same objection as previously, your Honor.

The Court: It may be received.

Q. (By Mr. Lipson, continuing): Mr. Looker, I show you Government's Exhibit No. 34. Mr. Looker, I ask you to read the entire contents of that one-page document.

A. "CC: Armour
Benkert
C. Armour
Braund
Westrick
File."

Q. Before we proceed any further, I'd like to identify the persons that we haven't already identified on that list.

Who is C. Armour?

A. C. Armour is Charles Armour.

Q. Does he bear any relationship to the defendant in [fol. 354] this action?

A. Yes, he is Mr. A. Watson Armour's brother.

Q. Has the name Braund come up previously in connection with this proceed?

A. No.

Q. Who is Mr. Braund?

A. I don't remember.

Q. Will you continue reading the letter?

A. Yes.

"April 20, 1956.

"Mr. Paul Horst
"Assistant to the President
"The Townsend Company
"New Brighton, Pennsylvania

"Dear Paul:

"I wish to thank you for the many courtesies extended during our very pleasant visit to New Brighton earlier this week. Your hospitality was certainly appreciated and we certainly appreciate the opportunity also of working with your organization more socially in some of our common problems.

"There is one point just brought to my attention con-

cerning the pricing of our aircraft Huckbolts which I think you might wish to look into. When we offer the Aircraft Huckbolt for sale to the Navy Department, Bureau of Aeronautics, central purchasing in Philadelphia, we have a packaging charge to package the parts in accordance [fol. 355] with Government specifications. This is overseas type packing and is fairly detailed. You may have been or may be asked to do the same and our prices are 60¢ per box for the 3/16, 80¢ per box for the 1/4, $1.00 per box for the 5/16", and $1.20 per box for the 3/8". For example, if they want the 1/4" aircraft Huckbolt, 100 pieces per box, we charge $8.00 per thousand extra; and if they want 25 pieces per box, we charge $32.00 per thousand extra.

"Again many thanks for your hospitality.

"Very sincerely yours, "Huck Manufacturing Company.
"Robert Looker, "Vice President in Charge of Sales."

Mr. Lipson: Thank you, Mr. Looker.

Your Honor, in marking the exhibits yesterday after the Court session, I inadvertently omitted a document which I ask the clerk to mark now as 34A. I believe copies have already been distributed to defense counsel.

I believe your Honor has a copy.

The Court: Yes.

(Whereupon a document was marked as Government Exhibit 34A by the reporter.)

Mr. Lipson: I show Government Exhibit marked 34 to defense counsel for examination and possible objection.

The Court: This is the same as 33?

[fol. 356] Mr. Lipson: I believe it is 34A, your Honor.

The Court: This is the same as Government Exhibit 34 except for——

Mr. Lipson (Interposing): Except for certain notations that appear on it.

The Court: All right. I assume defense counsel have the same objection?

Mr. Haggerty: Note the same objection.

The Court: All right, it may be received.

Q. (By Mr. Lipson, continuing): Mr. Looker, I will show you Government Exhibit 34A, directing your attention to

the distribution list at the very top of the page, are any names encircled?

A. Yes.

Q. Whose name?

A. Mr. Armour's name is encircled in red pencil.

Q. What does that indicate?

A. It indicates that that copy was intended for distribution to Mr. Armour.

Q. Are there any date stamps appearing on this document?

A. Yes.

Q. What is the date stamp?

A. In the upper left hand corner of the document is the date stamp, showing April 24, 1956, with initials I can't read above it.

[fol. 357] Q. This is a copy of the letter you just read, is it not?

A. It appears to be.

Mr. Lipson: I show Government Exhibit marked No. 35, which consists of two pages to counsel for the defendants for examination and possible objection.

Mr. Haggerty: Object to it, may it please the Court, the — reason not being with the Statute of Limitations.

Mr. Pomeroy: Same objection, your Honor.

The Court: All right, it may be received.

Mr. Lipson: Your Honor, the document appears to be coming apart, may I staple the two sections together before I give it to the witness?

Q. (By Mr. Lipson, continuing): Mr. Looker, I show you Government's Exhibit No. 35, would you read the first page, the letter of Government Exhibit 35?

A. Yes.

"May 9, 1956
"Mr. Paul Horst
"Assistant to the President
"Townsend Company
"New Brighton, Pennsylvania

"Dear Paul:

"We have a temporary condition where certain of our aircraft companies are using an electrofilm with collars

[fol. 358] and have no need for color anodizing with collar so treated."

Q. May I stop you there, Mr. Looker?

A. Yes.

Q. And ask you what electrofilm is?

A. Yes. Electrofilm is a compound, it is a dry lubricant which serves to—correction, which is applied to materials for the purpose of providing a permanent lubricating surface to the objects so coated.

Q. And the phrase that you just quoted, "color anodizing", what does that mean?

A. Anodizing is a means of protecting aluminum against corrosion, and color anodizing is a color process which is sometimes applied with the anodizing process.

Q. Would you continue reading the letter, please?

A. "We hope to be able to kill this with our new lubricant which we are working on but for the interim period have established collar prices for the 2024 aluminum alloy both the present color anodized and nonanodized and both with and without electrofilm. A copy of this tabulation showing all of the possible variations is attached hereto, and we would like to ask that the prices be adherred to in accordance with our existing agreement.

"The summary made is to prevent any misunderstanding which may exist.

"Very best regards,

[fol. 359] "Huck Manufacturing Company.

"Robert Looker, "Vice President in Charge of Sales.

"RL:mb
"Encl.

cc: Mr. Fred Dickenson"—correction, the word has been misspelled, it is "Fred Dickerson," it is spelled Dickerson.
"Mr. H. E. Chilcoat
"Mr. Armour
"Mr. Benkert
"File", and the word file is encircled in red.

Q. What does the phrase "Encl." refer to?

A. That there were enclosures sent with this document.

Q. Will you turn to the second page of this document? What is the title of the tabulation that appears on that second page?

A. "Huckbolt 2024 Collar Prices".

Q. And the next line?

A. "Effective April 9, 1956".

Q. Would you describe the nature of the tabulation that follows?

A. Yes, the tabulation following is a color price listing showing all 2024 aluminum alloy lockbolt collars various sizes, quantities, point of sale and coating or finish, and the prices per thousand pieces for the parts under each of those circumstances.

[fol. 360] Mr. Lipson: Thank you, Mr. Looker.

I show Government Exhibit No. 36 to counsel for the defendants for examination and possible objection.

Mr. Haggerty: For the purpose of the record, may it please the Court, an objection will be noted that the proposed exhibit is not within the Statute of Limitations.

Mr. Pomeroy: If the Court please, I would like also to object for the reasons previously stated and because for the further reason that it appears from the face of the document that this is an activity or an action taken pursuant to the agreement of September 14, 1956—'54, excuse me.

The Court: It may be received.

Mr. Lipson: Thank you, your Honor.

Q. (By Mr. Lipson, continuing): Mr. Looker, I will show you Government Exhibit No. 36. Would you just read to yourself, examine to yourself, not out loud, the first page of that document?

Are you familiar with the circumstances that caused you to write that document, the background circumstances?

A. I am, yes.

Q. Would you first relate the background circumstances to the Jury?

A. I received a report from the company salesman in [fol. 361] Atlanta, Georgia, by the name of Frank De Loach to the effect that the Lockheed Aircraft Company located in Marietta, Georgia, had objections to our packaging of lockbolts, and that the Townsend Company had offered the

Lockheed Company lockbolts for sale in a more favorable packaging plan to the Lockheed Company.

Q. Would you now read the first page of Government Exhibit No. 36, the entire document?

A. Just the first page?

Q. Just the first page.

A. "Huck Manufacturing Company
"Departmental Correspondence
"May 10, 1956
"Subject, Lockheed Aircraft Corporation, Marietta, Georgia
"To, R. Looker
"Copies, Mr. A. W. Armour, Mr. A. E. Benkert Representative, Mr. Albritton, Mr. Pelletier, Mr. Braund."

Q. I am sorry, Mr. Looker, I think we are looking at different pages. May I have yours? I think you are reading from the second page, are you?

A. Did you ask me to read from the second page?

Q. No, the first page.

[fol. 362] A. I am sorry.

Q. I think we can eliminate the necessity of reading the second and third pages from what you previously said.

Would you read the first page?

A. Yes.

"Huck Manufacturing Company
"Departmental Correspondence
"Date, May 11, 1956
"Subject, Lockheed, Marietta—Your Memo of May 10, 1956
"To, Mr. Westrick

Copies Armour, Benkert, DeLoach, Albritten, Pellettier, Braund and File"

the word file has been encircled.

"From R. Looker"—correction, "Robert Looker".

"In reply to the subject memo, I contacted Paul Horst on the matter of packaging and he has indicated to me that he will make it clearly understood to the Cherry Rivet Division immediately that they are to offer packaging to aircraft companies just exactly the way we offer packaging

as expressed in the copy of your teletype to Mr. Luke on the first page of the subject memorandum."

Q. Before you continue, would you identify who Mr. Luke is?

A. Mr. Luke was the buyer at the Lockheed Company in Georgia.

Q. Would you continue, please?

A. "He indicated that it could be possible that some deviation from this expressed policy might have been made by the Cherry Rivet Division of Townsend in lieu of any [fol. 363] better information but that the latest up-to-date information on packaging has been sent to Townsend and that we should hear no further from difficulties of this type.

"I also brought up the deal mentioned on the second page for inter-company grouping, and he definitely agreed that this is something that would be completely out of the picture and that they would not allow and that he will make certain that the Cherry Rivet Division understands.

"Many thanks for your very complete report. I do think that the situation is now in hand."

Q. What was that last paragraph?

A. "I do think that the situation is now in hand.

"Very best regards, Robert Looker.

"RL:mb".

Mr. Lipson: Thank you.

I now show counsel for defense Government Exhibit No. 37 for examination and possible objection.

Mr. Haggerty: For the purpose of the record, may it please the Court, objection that it is not within the Statute of Limitations.

The Court: Mr. Pomeroy, your same objection?

Mr. Pomeroy: Same, your Honor.

The Court: It may be received.

[fol. 364] Q. (By Mr. Lipson, continuing): Mr. Looker, I show you Government Exhibit No. 37, and I ask you to look at the first three paragraph- of that piece of correspondence and just examine it silently to yourself.

Mr. Looker, is the subject matter contained in that first three paragraph section the same thing you just spoke of

before with respect to the packaging of lockbolts for Lockheed?

A. Yes.

Q. Would you read the heading of the document, the printed portion down through the part "from"?

"A. Huck Manufacturing Company
"Departmental Correspondence
"Date May 21, 1956
"Subject, Lockheed, Marietta—Your May 9, 1956 Contact Report
"To, DeLoach
Copies Listed Below
"From, Robert Looker."

Q. Will you now read the paragraph, the fourth paragraph off that page?

A. Just between us two, Cherry will go along with our identical policy so it might be necessary to hold Luke's hand for a week or so until he gets the full story out of Cherry."

Q. Would you now turn to the second page of that memorandum and would you read the third paragraph from the [fol. 365) bottom starting with "I have already"?

A. "I have already taken the matter of split quantities up with Townsend and they will not go along with the deal, neither will we, of splitting quantities with two vendors and asking for the lowest price from each."

Q. Would you read the signature portion of this document?

A. "Very best regards,
"Robert Looker".

Q. And to whom were copies distributed?

A. Copies were distributed to "Armour, C. Armour, Denkert, Brilmyer, Albritton, Murphy, Pelletier, Westrick," and to "File", file is encircled on this copy.

Q. For the purposes of the record will you identify, please, Albritton and Murphy, whom I don't believe have been previously identified?

A. Yes, Mr. Albritton was the company's production

manager, and Mr. Murphy was in charge of production schedules.

Mr. Lipson: I now show to defense counsel Government Exhibit No. 38 for examination and possible objection.

Mr. Haggerty: For the record, not within the Statute of Limitations, I so object.

Mr. Pomeroy: If the Court please, I was just looking over some of these other exhibits including this one, and up to Exhibit No. 69, I believe it is, and they are all out-[fol. 366] side the statutory period, and if it is agreeable with your Honor I would like to make a blanket objection to them that we don't have to burden the record, at least with my objection along the same lines as I made with reference to Exhibits 24 and 26, unless there is some special item which I might wish to object to especially.

I don't wish to bind Mr. Haggerty to this.

The Court: The Court will recognize these objections as being made by both of you. However, if there is any special additional objection I wish you would call it to our attention for the record.

Mr. Pomeroy: Thank you.

The Court: So the objections from both of you will be standing objections to all these exhibits as we go along.

Mr. Pomeroy: Thank you, sir.

Q. (By Mr. Lipson, continuing): I show you Government's Exhibit No. 38. I ask you to read Government Exhibit 38, Mr. Looker.

A. "cc: Armour, C. Armour, Benkert, F. DeLoach, File."

Q. Who is F. DeLoach?

A. F. DeLoach is a man by the name of Frank DeLoach, who is the company sales representative in Atlanta, Georgia.

Q. Would you continue, please?

[fol. 367] A. Yes.

"July 3, 1956

"Mr. Paul Horst, President

"Townsend Company

"New Brighton, Pennsylvania

"Dear Paul:

"I understand from our Atlanta representative that your Cherry Division offers prepaid premium shipments

when they are behind schedule which is a little stiff competition and gives them a competitive edge which we do not enjoy.

"I wondered if you would look into this in view of our price equalization agreement.

"Very sincerely yours, Huck Manufacturing Company, Robert Looker."

Q. Mr. Looker, what is meant by the phrase "prepaid premium shipments", what does that mean?

A. It means that the producer ships by fast premium means at his expense.

Q. What is meant by the phrase "premium means"?

A. An example of that would be by air express or by air cargo.

Q. As opposed to how normal shipment was made?

A. As opposed to possibly truck shipment or rail shipment.

Q. And who would pay the air cargo freight?

A. On prepaid premium shipment the producer or shipper would pay the air cargo bill.

[fol. 368]

Q. Thank you. Mr. Looker, with respect to the premium shipments on air cargo shipments, do you recall whether or not any satisfaction was received from Mr. Horst of the Townsend Company with respect to this letter that you just read?

A. I don't recall.

Mr. Lipson: Do I understand defense counsel, that you do not wish to see the copies of the documents?

Mr. Haggerty: No, we would like to see them.

Mr. Lipson: I will show you Government Exhibit 39 for examination and possible objection.

Mr. Haggerty: Same objection.

The Court: Mr. Pomeroy has the same objection.

Mr. Pomeroy: That's right.

The Court: It may be received.

Q. (By Mr. Lipson, continuing): Mr. Looker, I will show you Government Exhibit No. 39 and ask you to read Government Exhibit 39 starting with the letterhead.

A. "Huck Manufacturing Company
"Departmental Correspondence

"Date, July 3, 1956

"Subject, Lockheed, Marietta—Your Memo of June 16, 1956

"To, Frank DeLoach

Copies, Armour, C. Armour, Benkert and File"

the word file has been encircled.

"From Robert Looker

[fol. 369] "In reply to your subject memorandum, I first want to thank you for the very complete comprehensive report on the request of Hardy Luke and your analysis.

"We have gone back to the Townsend Company asking them to stop their premium shipments for behind schedule orders and this should be cleared up very shortly.

"The last sentence of your memorandum read 'If I might be of further service to you please notify me.'

"I think the thing to do here is to try to keep on the best side of Hardy Luke by any and all means that are possible and ethical.

"I am sure you can do it and that we will hold the business you have gained so painfully.

"Very best regards, Robert Looker.

"RL:mb".

Mr. Lipson: Thank you.

I now show Government Exhibit No. 40 to defense counsel for examination and possible objection.

Mr. Haggerty: Same objection, may it please the Court.

The Court: It may be received.

Q. (By Mr. Lipson, continuing): Mr. Looker, I now show you Government Exhibit No. 40, would you read that letter starting with the distribution list?

[fol. 370] A. "cc: Armour, C. Armour, Benkert, Mathews, Egnot File".

Q. Would you identify Mr. Mathews?

A. Mr. Mathews was the sales manager of the company.

Q. Would you identify Mr. Egnot?

A. Egnot was a salesman.

The Court: When you say sales manager, you mean of Huck?

A. Yes, of Huck Company.

Q. (By Mr. Lipson, continuing): Would you read the remainder of the letter, please?

A. Yes.

"July 3, 1956
"Mr. Paul Horst
"Assistant to the President
"Townsend Company
"New Brighton, Pennsylvania

"Dear Paul:

"Our Buffalo representative reports that you have permitted grouping of non-standard commercial Huckbolts (about grip 23 or 24) with short standard grips."

Q. Would you explain what is meant by the term grouping in this context?

A. Yes. Grouping is a term used to describe a pricing [fol. 371] practice where one size of a part—correction, where the quantity required for one size of a part is added to the quantity required for a second part, and the total quantity is the quantity on which the price for both are based.

Q. Is it a price advantage to a consumer to group or to the producer to allow to group?

A. It is to the consumer.

Q. Would you continue reading the remainder of that letter?

A. Yes.

"This report comes from a Mr. Stutz, Shop Superintendent of Niagra Blower Company.

"We only permit grouping of the part numbers shown in the price list and we would like to ask that you do likewise.

"Could we hear from you in this regard.

"Very sincerely yours, "Huck Manufacturing Company,
"Robert Looker

"RL:mb".

Mr. Lipson: Thank you.

I now show Government Exhibit marked 41 to defense counsel for examination and possible objection.

Mr. Haggerty: Note for the record the same objection.

Q. (By Mr. Lipson, continuing): Mr. Looker, I will now show you——

[fols. 372-373] The Court: It may be received.

Mr. Lipson: I am sorry, your Honor.

The Court: All right, it may be received.

* * * * * * *

[fols. 374-377] Mr. Lipson: Thank you. I show Government's exhibit marked 42 to defense counsel for examination and possible objection.

Mr. Pomeroy: Is 41 in?

The Court: Yes.

Mr. Haggerty: 41 is in, yes. Letter of December 12, '55.

Mr. Pomeroy: Thank you.

Mr. Haggerty: For the purpose of the record, the same objection, your Honor.

The Court: Mr. Pomeroy, I assume the same objection?

Mr. Pomeroy: Yes, I made a blanket objection, yes, your Honor.

The Court: All right. Fine.

Mr. Lipson: Thank you.

The Court: It may be received.

* * * * * * *

[fols. 378-380] Mr. Lipson: I am showing Exhibit No. 43 to defense counsel for examination and possible objection.

Mr. Haggerty: For the purpose of the record, the same objection.

The Court: All right. Mr. Pomeroy, the same thing?

Mr. Pomeroy: Yes, your Honor.

The Court: All right. It may be received.

* * * * * * *

[fol 381] Mr. Lipson: I show Government Exhibit marked No. 44 to defense counsel for examination and possible objection.

Mr. Haggerty: For the purpose of the record, the same objection.

The Court: Mr. Pomeroy's is noted as well. It may be received.

Mr. Lipson: Thank you, your Honor.

Q. (By Mr. Lipson) I show you Government Exhibit No. 44, Mr. Looker. I will ask you to read that one page document, from the letterhead through the signature.

A. (Reading):

"Huck Manufacturing Company, "Departmental Correspondence, "Dated December 27, 1955."

Q. Is there any kind of stamp impression near the date?

A. Yes, adjacent to the date, to the right, the rubber stamp "A.W.A. III, December 28, 1955."

(Reading): "Subject: Freight Equalization with the Townsend Company.

[fol. 382] "To: Mr. Armour."

There is a checkmark by his name.

"Copies: Messrs. Benkert, Mathews, Pelletier, Reynolds and File.

"From: Robert Looker.

"Paul Horst called me yesterday, December 21, to advise that Dickinson is still holding out for prepaid freight, and that he does not feel that freight equalization is a basis for a satisfactory solution to the freight problem."

Q. Would you stop at that point, Mr. Looker, and explain the difference between prepaid freight and freight equalization?

A. Yes. I believe I have explained what freight equalization is.

Q. I believe you have.

A. Prepaid freight is the process where the producer or the shipper pays the entire freight bill to the consumer.

Q. Would you continue, then, from the second sentence of that document?

A. Yes.

(Reading):

"I believe that this subject has become now important enough to us to necessitate a meeting with Mr.

Dickinson, himself, so that we can arrive at some suit-
[fol. 383] able arrangement.

"He will, of course, go along ith the freight equalization for the balance of the two year period, for we are in a position, of course, to dictate his actions during that time.

"I suggest that we make this a topic of discussion during one of your early trips to Detroit.

"Very sincerely yours, "Robert Looker. "RL:mb."

And my initials just above my name.

Q. Thank you.

Mr. Lipson: I show Government Exhibit marked No. 45 to defense counsel for examination and possible objection.

Mr. Haggerty: For the purposes of the record, I object to it. It is not within the period of the statute of limitations.

The Court: Mr. Pomeroy's objection continues. It may be received.

Q. (By Mr. Lipson) Mr. Looker, I show you Government Exhibit marked No. 45. Mr. Looker, I ask you to read that document, starting with the letterhead.

A. (Reading): "Huck Manufacturing Company, "De-
[fol. 384] partmental Correspondence."

Q. Is there any written notations at that point in the margin of the document?

A. At the top—the top righthand part of the page there appears to be the letters "A.E.B" written, followed by the numbers "5-1-56" and just below that a red rubber stamp impression with the letters "A.W.A. III, March 9, 1956."

The date of the memorandum date: March 1, 1956.

(Reading):

"Subject: Visit From the Townsend Company—Mr. Paul Horst and Mr. George Bentley.

"To: Mr. Armour——"

Q. (Interposing) Mr. Looker, have we—I don't believe we previously identified Mr. George Bentley. Who is he?

A. Mr. Bentley was the Sales Manager of the Townsend Company.

* * * * * * *

[fol. 385] Q. Are there any handwritten notations on that document?

A. Yes, there are.

Q. Do you recognize the handwriting?

A. I do.

[fol. 386] Q. Whose handwriting is it?

A. Mr. Armour's.

Q. What do the notations say?

A. (Reading): "It was agreed to go along as we are at present."

Q. Thank you, Mr. Looker.

Mr. Lipson: Your Honor, the Government will not offer the exhibit previously marked as No. 46, it is only a carbon copy of the other one.

I show Government Exhibit No. 47 to defense counsel for examination and possible objection.

Mr. Haggerty: Same objection to Government's proposed Exhibit 47.

The Court: All right. Mr. Pomeroy's is the same. It may be received.

* * * * * * *

[fol. 387] Mr. Lipson: I now show Government Exhibit 48 to defense counsel for examination and possible objection.

[fol. 388] Mr. Haggerty: Same objection, not within the period of the statute of limitations.

The Court: Mr. Pomeroy, same reason.

Mr. Lipson: Thank you.

The Court: And it may be received.

* * * * * * *

[fol. 389] Is there any marginal notation?

A. There is.

Q. Do you recognize the handwriting of that marginal notation?

A. Yes.

Q. Whose is it?

[fol. 390] A. Mr. Armour's.

Q. The word "stump" referred to in this memorandum, what does that refer to?

A. Refers to the Lockbolt fastening device similar to the Lockbolt which has no extending pin tail.

Q. Is that the Lockbolt stump that you have previously testified to?

A. Yes.

Q. I direct your attention to the very last part of the last sentence that you read to us. What is meant by the phrase "our complete cooperation for the entire line"?

A. I don't remember what I meant at that time.

Q. Thank you, Mr. Looker.

Mr. Lipson: Your Honor, we will not introduce—or offer Exhibit No. 49 which has previously been marked, it is merely a carbon reproduction.

I show Government Exhibit No. 50 to defense counsel for examination and possible objection.

Mr. Haggerty: May I inquire does Government counsel intend that the attachment to the exhibit be included as part of the exhibit?

Mr. Lipson: Yes. The specimen letter?

Mr. Haggerty: Yes.

Mr. Lipson: Yes.

Mr. Haggerty: Same objection, may it please the [fols. 391-392] Court.

The Court: It may be received.

Mr. Lipson: Thank you, your Honor.

Q. (By Mr. Lipson) Mr. Looker, I show you Government Exhibit marked No. 50. I ask you to read the head note—the heading section of that first page of that document.

A. The heading of the first page?

Q. That's right.

A. (Reading): "Huck Manufacturing Company, Departmental Correspondence. Date: February 15, 1955. Subject: AL-ALS Price Increase."

Q. Would you stop for a moment and define what "AL and ALS" means?

A. AL is a designation referring to the aircraft lockbolt, while ALS refers to the aircraft lockbolt stump.

* * * * * * *

[fols. 393-395] Mr. Lipson: I now show Government Exhibit marked 51 to defense counsel for examination and possible objection.

Mr. Haggerty: Note the same objection, may it please the Court, for the purpose of the record.

The Court: All right, Mr. Pomeroy's is noted, too. It may be received.

• • • • • • •

[fol. 396] Mr. Lipson: I now show Government Exhibit marked 52 to defense counsel for examination and possible objection.

Mr. Haggerty: Note the same objection for the purpose of the record.

The Court: Mr. Pomeroy's is noted as well. It may be received.

Mr. Lipson: Thank you, your Honor.

• • • • • • •

[fol. 397] Q. Mr. Looker, in the tabulation following that portion of the document, would you just read those items which are Lockbolt items?

A. Yes. CL Pins plus 8-; CL Collars (LC-F, LC-I and 2 LC-R) plus 10-; AL Steel 3/16 & 1/4" dias. plus 5-; 5/16 and 3/8" dias. plus 20-; Aluminum-5/32", 3/16" & 1/4" dias., plus [fol. 398] 10-; 5/16 and 3/8" dias., plus 20-; ALS plus 20-; SAL 3/16" and 1/4" dias., plus 5-; 5/16" and 3/8" dias., plus 20-; SLS, plus 20-".

Q. Thank you, Mr. Looker.

Mr. Lipson: I will show Government Exhibit marked 53 to defense counsel for examination and possible objection.

Mr. Haggerty: Same objection for the purpose of the record.

The Court: Mr. Pomeroy's is also noted. It may be received.

• • • • • • •

[fol. 399] Mr. Lipson: Your Honor, the Government will not offer the exhibit previously identified as 54, for reasons previously noted.

I now show Government Exhibit No. 55 to defense counsel for examination and possible objection.

Mr. Haggerty: Same objection.

The Court: Mr. Pomeroy's is noted as well: It may be received.

• • • • • • •

[fols. 400-401] Q. That is all, Mr. Looker. Are the "Pull Through (PT) and Self Plugging (9SP) blind rivets" lockbolts or are they some other device?

A. They are other devices.

Mr. Lipson: At this time I would like to show Government Exhibit No. 56 to defense counsel for examination and possible objection.

Mr. Haggerty: Same objection, for the purpose of the record.

The Court: It may be received.

Mr. Lipson: Thank you, your Honor.

• • • • • • •

[fols. 402-403] Q. Will you continue, please?

A. (Reading): "As soon as time permits, we will have West Coast price lists established covering the sale of our AL-ALS-CL-SAL-SLS-OS and BL with the 3- included. The West Coast——"

Q. Are those lockbolts devices, Mr. Looker?

A. All except the last two, the OS and BL are not lockbolt devices.

• • • • • • •

[fol. 404] Mr. Lipson: The documents that have been previously marked and identified as Government exhibits Nos. 57 and 58 will not be offered in lieu inasmuch as they are merely carbon reproductions of the one already admitted.

I now show Government Exhibit marked 59 to defense [fol. 405] counsel for examination and possible objection.

Mr. Haggerty: Note the same objection as to the Exhibit 59.

The Court: Mr. Pomeroy's is noted as well. It may be received.

• • • • • • • •

[fol. 406] Mr. Lipson: I now show Government Exhibit marked 60 to defense counsel for examination and possible objection.

Mr. Haggerty: Note the same objection.

The Court: Mr. Pomeroy's is noted as well. It may be received.

Mr. Lipson: Thank you. Thank you, your Honor.

Q. (By Mr. Lipson) Mr. Looker, I show you Government Exhibit No. 60. What date does that exhibit bear?

A. The typed date is July 13, 1956.

Q. What is the letterhead?

A. The Brown-Line Corporation.

[fols. 407-408] Q. What was your relationship with Brown-Line Corporation at that time?

A. I was soon to take over the position of its president.

Q. Is there a rubber stamp impression on this document?

A. There is, yes.

Q. What does it say?

A. It says July 18, 1956, A.E.B.

Q. Who is A.E.B.?

A. Alfred E. Benkert.

Q. Is there another rubber stamp impression on the lower margin of this document?

A. There is, yes.

Q. What is that?

A. It says "Huck—Confidential".

Q. Will you explain to the members of the jury how a Huck Confidential stamp got on a piece of Brown-Line Corporation piece of correspondence?

A. I think it was sort of an error. I intended at the time I wrote this yetter to Mr. Armour to indicate that the letter was not for general publication. We used a—we used this particular rubber stamp in my office for that purpose on other matters and the Huck shouldn't have been on it.

• • • • • • • •

[fol. 409] The Court: Apparently at this time you are still at Huck but using this new stationery, is that it?

A. That's correct. Yes, the letterhead was typed on.

Mr. Lipson: I now show Government Exhibit marked 61 to defense counsel for examination and possible objection.

Your Honor, in order to obviate any possible objections to this document, I would like to make it clear that we are not offering it for the statements of the first three paragraphs of the letter.

Mr. Pomeroy: If the Court please, it is a little hard to separate three paragraphs from the other three that are in it. On behalf of the defendants Townsend and Mr. Dickenson, I object to the offer of this letter as being incompetent, irrelevant and immaterial, and as hearsay and inadmissible.

The Court: Rather than admit it, I assume you will follow along——

Mr. Haggerty: (Interposing) I have no objection to it, your Honor.

The Court: I was suggesting that—you say the fourth paragraph or third paragraph?

Mr. Lipson: I am interested in introducing it primarily for the information contained in the paragraph that begins with the three words "As you will recall."

[fol. 410] The Court: That is four.

Mr. Lipson: Or the third from the bottom, I said originally, your Honor.

The Court: Why not hand the letter to the witness and ask him if he recalls this situation, and he can testify to it from—by having refreshed his recollection.

Q. (By Mr. Lipson) Mr. Looker, I show you Government Exhibit marked for identification No. 61. Mr. Looker, do you recall whether in the year 1959 you ever requested a lockbolt license from the Huck Manufacturing Company, based on your recollection?

The Court: And using this letter to refresh your recollection.

A. Yes, I do recall it.

Q. (By Mr. Lipson) Whom do you recall communicating with?

A. Mr. John C. Sterritt.

Q. Had you ever before received a reply to an earlier request?

A. I am at liberty to read this, am I not?

Q. Yes, you may read from that, but you may only testify from your recollection.

A. From my memory. Yes.

[fols. 411-413] Yes, I recall having received a reply to an earlier request.

Q. Do you recall the nature of that reply?

A. It was——

Mr. Haggerty: (Interposing): I object to it. If it is in writing, it is the best evidence.

The Court: All right, I will admit it.

Mr. Haggerty: Oh, I have no objection to this, but I am objecting to his testifying. If it is in writing, that is the best evidence, and I ask the Government to produce it. I have no objection whatsoever to that letter, your Honor.

The Court: Well, I am going to admit the entire letter as having some probative value and it should be admitted. Go ahead.

. . . . . .

[fol. 414] Mr. Lipson: I'd like to show Government Exhibit marked for identification No. 63 to defense counsel for examination and possible objection.

For the purposes of the record, the document previously marked as 62 will not be offered as it is merely repetitive.

The Court: Pardon?

Mr. Lipson: There was a document previously identified.

The Court: Oh, I see.

Mr. Lipson: As 62, which is a copy of the letter just admitted, and it will not be offered of itself.

The Court: All right.

It is about time we take a recess. We will take ten minutes, please.

(Whereupon a short recess was taken and then the Court was called to order.)

The Court: Now that the parties are here, you may proceed, counsel.

Mr. Lipson: Thank you, your Honor. I believe that defense counsel has been examining Government Exhibit [fol. 415] No. 63.

Mr. Haggerty: I have no objection to Exhibit No. 63, your Honor. It will be noted I have reformed.

The Court: I notice the date on the letter might have something to do with it.

Mr. Pomeroy?

Mr. Pomeroy: I have no objection to that either, your Honor.

The Court: All right. Proceed.

• • • • • • •

[fol. 416] Mr. Lipson: Thank you.

I now show Government Exhibit marked No. 64 to defense counsel for examination and possible objection.

Mr. Haggerty: No objection, your Honor.

[fols. 417-418] The Court: Mr. Pomeroy?

Mr. Pomeroy: If your Honor please, I do object to this letter. It is another letter from this witness on behalf of Brown-Line Corporation to Mr. Sterritt, as counsel for Huck. I object to it as immaterial, irrelevant and incompetent, as far as the Defendants Townsend-Dickenson are concerned, and not binding on them.

The Court: Well, the objection heretofore was that it was without period. This is within the period.

Mr. Pomeroy: This is within the period. I do not object on that ground.

The Court: It may be received.

• • • • • • •

[fols. 419-420] Mr. Lipson:

I now show Government Exhibit marked No. 65 to defense counsel for examination and possible objection.

Mr. Pomeroy: I have the same objection as I had to the two preceding exhibits, if the Court please.

The Court: All right. Mr. Haggerty?

Mr. Haggerty: No objection.

The Court: It may be received.

• • • • • • •

[fols. 421-423] Mr. Lipson: Thank you.

I now show Government Exhibit marked 66 to defense counsel for examination and possible objection.

Mr. Haggerty: As much as I dislike, I must object to this exhibit for the reason that it is not within the period of the statute of limitations.

Mr. Pomeroy: I so object also, your Honor.

The Court: I notice that we are going back to 1954 now, so that the Jury doesn't get confused, and the ruling that has applied earlier heretofore will still be the same, so it may be admitted.

* * * * * * *

[fols. 424-425] Mr. Lipson: Thank you, Mr. Looker.

The document that has previously been identified as Government Exhibit No. 67 will not be offered.

I now show defense counsel Government Exhibit marked No. 68 for possible objection.

Mr. Haggerty: Object to it. It is without the period of the statute.

The Court: For the same reason. Mr. Pomeroy, your objection is noted as well.

Mr. Pomeroy: Thank you.

The Court: It may be received.

* * * * * * *

[fol. 426] Mr. Lipson: Thank you.

I now show Government Exhibit marked No. 69 to defense counsel for examination and possible objection.

Mr. Haggerty: I object to it, as it is without the period of the statute of limitations.

The Court: Mr. Pomeroy, the same?

Mr. Pomeroy: Yes, your Honor.

The Court: It may be received.

[fols. 427-428] Mr. Lipson: Thank you, your Honor.

Q. (By Mr. Lipson, continuing): Mr. Looker, I will show you Exhibit No. 69. What date does that document bear?

A. May 11, 1953.

Q. Would you read the letterhead on that document?

A. (Reading):

"Huck Manufacturing Company, Departmental Correspondence".

Q. Does a stamp impression appear on the top of the document?

A. There are two such impressions, one to the left with the letters "E.B.S. May 15, 1953" and one to the right "A.W.A." "Roman Numeral "III". "May 15, 1953".

Q. What is the subject as written in?

A. (Continuing reading):

"Meeting May 11, 1953 License—Lockbolts ITW".

Q. What does "ITW" mean?

A. It means "Illinois Tool Works".

Q. Would you read the remainder of that document?

A. Yes. (Continuing reading):

* * * * * * *

[fol. 429] Have defense counsel had the opportunity of examining No. 70?

Mr. Haggerty: 70? No.

The Court: I have no 70.

Mr. Lipson: No, your Honor, you haven't. For some reason, we were short of copies on that particular document, and I will give you my copy.

The Court: Is this the so-called cross license agreement?

Mr. Lipson: I believe it is, your Honor.

Mr. Dickey: No objection to Exhibit 70, except to the interlineations and red pencil underscoring and marginal notes.

The Court: The ones that are on the exhibit, I notice they have been erased.

I think that is the one you gave me; is it not?

Mr. Lipson: No, your Honor, I think this red doesn't come out very well on the photocopying process. They appear to be erased. I am not offering the exhibit for the marginal notations and I will delete them. I don't know where the marginal notations came from or where the interlineations came from. We received the document in the same condition in which we find it now.

The Court: If there is any objection to any particular marking there, we can so arrange to have them blocked [fols. 430-437] out.

Mr. Dickey: No, I don't see any particular ones. I don't know what significance they have.

The Court: If you want them blocked out, in the event the jury does desire to examine it, we can have that done at that time. You don't need to do it now.

Mr. Pomeroy: My position is the same as Mr. Dickey's on this, your Honor.

The Court: All right, it may be received subject to those exceptions.

* * * * * * *

[fol. 438] Mr. Lipson: Thank you. I now show Government Exhibit marked 71 to defense counsel and possible objection.

Mr. Pomeroy: If your Honor please, with reference to Exhibit 70, just read into evidence, and Exhibit 71, just offered, these are agreements made on the same date, October 22nd 1958.

The Court: I noted that, too.

Mr. Pomeroy: They do not relate specifically to lockbolts, which is the product involved in this suit, and therefore, for the sake of the record, I would like to object to [fol. 439] the present offer and move that the prior Exhibit 70 be received—to be stricken from evidence on the grounds they are incompetent, irrelevant and immaterial, dealing with subject matter beyond the scope of the indictment in this case.

The same argument would pertain to Exhibit 72, which has not yet been offered, which is another 1958 agreement dealing with a product called blind lockbolts. Perhaps I am anticipating too much here.

The Court: No, that is all right. I am glad you are talking about it now. These are items that are not set forth in the indictment as——

Mr. Pomeroy (Interposing): As we read the indictment, your Honor, that is true.

The Court: And they are matters outside, you allege or argue, the scope of the indictment; is that right?

Mr. Pomeroy: That's right.

The Court: Because they are of other matters, and they are actually, with respect to 70, are the tools for setting and removal of the lockbolt devices, as I see it, and 72 has to do with Huck blind lockbolts, which are not subject to this indictment; is that correct?

Mr. Pomeroy: That would be our construction of it, your Honor.

[fol. 440] The Court: All right. Now, what is the purpose of these?

Mr. Lipson: Your Honor, the indictment, I will use the words of the indictment itself, Paragraph 15(c), in setting forth the manner by which the conspiracy was formulated and effectuated. That paragraph states (reading):

> "That the defendants entered into a series of license agreements by which each corporate defendant agreed to cross license the other for all improvements made in the manufacture of lockbolts and substitutes for lockbolts and related products."

Now, I draw the Court's attention to the language in Government Exhibit No. 70, the agreement formulated by both these corporations.

On the first page (reading):

> "Whereas, Huck and Townsend are both engaged in the development, design, construction, use and sale of tools and equipment and parts thereof which are employed in the installation or setting and removal of lockbolt devices, . . ."

Then, it goes on and in detail——

Mr. Pomeroy (Interposing): What paragraph is that, please?

[fol. 441] Mr. Lipson: The first "Whereas" paragraph on the first page of the document.

The Court: Of which, 70 or 71?

Mr. Lipson: 70. I will deal with them in numerical order.

I think this clearly establishes that these are related, closely related items; therefore, clearly fall within the scope of the indictment.

The Court: However, they are not subject to any patents; are they?

Mr. Pomeroy: They are not subject at least to the patents——

Mr. Lipson (Interposing): So far as I know there is no patent involved in this particular——

The Court: This goes beyond, then, the charge goes beyond the patented articles?

Mr. Lipson: Oh, yes, sir. We haven't phrased the indictment, the Grand Jury didn't phrase it in terms of the patents.

The Court: Alone?

Mr. Lipson: It was phrased in terms of the product.

The Court: All right.

Mr. Pomeroy: Well, if your Honor please, looking at the indictment, 15(c), which Mr. Lipson has referred to as [fol. 442] the appropriate portion of it, the language there speaks of the manufacture of lockbolts and substitutes for lockbolts, and related products.

I would assume that the proper construction of that language, which would mean related in the sense of being other fasteners and not the gun, or tools or equipment by which the fasteners are installed or applied. That was the way, at least, that we have read the indictment.

This, of course, is a matter for your Honor's determination, but for that reason, I would feel that the tools manufactured by each of the companies, and which are part, which are the subject matter of Exhibit 70, are not properly involved in this case, and hence, I move to withdraw the exhibit.

Mr. Lipson: Your Honor, there has already been testimony on the record of this case that the lockbolts cannot be installed without the lockbolt installation tool. You need the tool to make the lockbolt, to install the lockbolt. A closer relationship could hardly be imaginable.

The Court: There was that reference, I noticed, in some of the correspondence, when there was some problem somewhere in the Cherry Hill plant.

Mr. Lipson: Yes, sir. They are intimately connected. One is completely worthless without the other.

The Court: All right. On that explanation, and for [fols. 443-447] that purpose, I will admit them. That goes for 71 and 72, while we have discussed it.

. . . . . .

[fols. 448-455] Mr. Lipson: May I assume, then, that 72 has been admitted, your Honor?

The Court: With the same objection that has heretofore been made.

. . . . . .

[fol. 456] Mr. Lipson: For the purposes of the record, the Government exhibit that has previously been marked and identified as 73 will not be offered.

The Court: I believe it was received, was it not?

Mr. Lipson: That was 72, I believe. The last one.

Mr. Haggerty: 72 was the last one, according to my records, your Honor.

Mr. Lipson: 73, I think, is the carbon copy again.

Mr. Dickey: 72 and 73 are the same thing, are they not?

Mr. Lipson: That is right. We are not offering 73 in-
[fols. 457-458] cidentally, since 72 came in.

The Court: All right, we start on 74 then?

Mr. Lipson: Yes, sir.

I show Government Exhibit marked No. 74 to defense counsel for examination and possible objection.

Mr. Haggerty: Object to the Government's offered exhibit 74 for the reason that it is not within the period of the statute of limitations.

The Court: Mr. Pomeroy, the same objection?

Mr. Pomeroy. Same objection as Mr. Haggerty.

The Court: All right, it may be received.

Robert Looker, a witness called on behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further upon his oath, as follows:

Direct examination. (Continued)

By Mr. Lipson:

Q. Mr. Looker, I show you Government Exhibit marked 74. I would like to ask you to read certain selected portions from that exhibit.

• • • • • • •

[fol. 459] (By Mr. Lipson) Is there any initials appearing on the remainder of that letter?

A. There are the initials A.W.A.: the letter "s".

Q. What does the initials "A.W.A." signify?

A. A. Watson Armour.

[fol. 460] Mr. Lipson: The document that we have previously marked and identified as No. 75 will not be offered.

Mr. Haggerty: May we have the date for the record on that last letter?

Mr. Lipson: Yes, sir. The date appears to be July—date of the letter, on the first page, is July 9, 1954.

Mr. Haggerty: Thank you.

Mr. Lipson: The date of the date stamp, I believe, is July 12 of the same year.

I now show Government Exhibit marked 76 to defense counsel for examination and possible objection.

Mr. Haggerty: May it please the Court, we object to the Government's proffered Exhibit 76 for the reason that it is not within the period of statute of limitations, and with the understanding, of course, that those portions that are underlined and notations made in red pencil are not part of the agreement.

Mr. Lipson: The agreement is offered apart from the red pencilled notations, your Honor.

[fols. 461-463] Mr. Haggerty: And we also note that it has attached to it——

Mr. Lipson: (Interposing) With the Court's permission, we can remove that attachment at this time.

The Court: You mean the top sheet?

Mr. Lipson: Yes, sir, your Honor.

Mr. Haggerty: The top sheet.

The Court: All right, take it off.

Mr. Pomeroy: If the Court please, I also object to it being beyond the period of limitations and because this is an agreement between Huck and another company which should have no probative effect as far as Townsend and Mr. Dickenson are concerned.

The Court: Well, I think it is material as set forth in the opening statement and in the indictment itself and it may be received.

* * * * * * *

[fol. 464] Mr. Lipson: I now show Government Exhibit marked 77 to defense counsel for examination and possible objection.

Mr. Haggerty: Object to the offered exhibit by the Government, namely, Government's Exhibit No. 77, for the

reason it is not within the period of the statute of limitations.

Mr. Pomeroy: I make the same objection as I did to 76, if the Court please.

The Court: It may be received.

Mr. Lipson: Thank you, your Honor. Your Honor, before reading or explaining anything from this agreement, I would like to ask Mr. Looker a question.

Q. (By Mr. Lipson) Mr. Looker, are you familiar with a firm known as Standard Pressed Steel Company?

A. I am, yes.

Q. Would you tell us the nature of the business conducted by this firm?

A. Standard Pressed Steel manufactures, among other things, a line of aircraft bolts and high strength aircraft fastening devices.

Q. Thank you.

• • • • • • •

[fols. 465-466] Mr. Lipson: I now show Government Exhibit marked 78 to counsel for examination and possible objection.

Mr. Haggerty: No objection, may it please the Court.

Mr. Pomeroy: If the Court please, I object only on the ground as to relevancy as to Defendants Townsend and Dickenson.

The Court: It may be received.

• • • • • • •

[fol. 467] Q. (By Mr. Lipson) Mr. Looker, are you familiar with a firm known as Illinois Tool Work, Fastex Division?

A. Yes, I am.

Q. What kind of business are they engaged in?

A. They manufacture commercial fastening devices such as sheet metal screws and the like.

Q. Thank you.

Mr. Lipson: I show Government Exhibit marked 79 to defense counsel for examination and possible objection.

Mr. Haggerty: I have no objection to Government's offered Exhibit No. 79.

The Court: Mr. Pomeroy?
Mr. Pomeroy: No objection, your Honor.
The Court: It may be received.

Q. (By Mr. Lipson) Mr. Looker, I show you Government Exhibit No. 79, do you recognize any of the handwritten notations appearing in the lefthand margin as recognizing the source of the handwriting?
[fols. 468-474] A. I do not.

. . . . . .

[fols. 475-476] Mr. Lipson: Thank you, your Honor. We have no further questions of Mr. Looker at this time.

. . . . . .

[fol. 477] Cross-examination.

By Mr. Haggerty:

Q. Mr. Looker, in reference to statements that you have made to the United States Government, you did furnish the United States Government, did you not, with a memoranda, a statement of activities of Huck Manufacturing Company, which are submitted for consideration by the anti-trust division of the United States Department of Justice, under the name of the Brown-Line Corporation, signed by yourself, on October 27, 1958, isn't that true?
A. Yes.
Q. Prior to October the 27th, 1958, did you make any statements to any representative or agent of the Federal Government?
A. That is in connection with this matter?
Q. Yes, sir.

The Court: By "statement" you mean oral or written?
Mr. Haggerty: I am first speaking of written statements.
The Court: All right.

A. No.
[fol. 478] Q. (By Mr. Haggerty) Did you, prior to October 27th, 1958, make any oral statement to any representative or agent of the United States Government?
A. No, but I must explain my answer.

Q. Well, you will have a chance to explain on redirect examination.

A. I don't know that that question can be answered directly. My I explain it now?

Q. No, this is cross examination.

A. I see.

Q. We have a very able Assistant United States Attorney here that will help you out, Mr. Looker.

Now, Mr. Looker, did you on the 27th day of October, 1958, confer with an assistant U.S. Attorney General of the United States?

A. I am not certain of the date, I did confer with an attorney.

Q. To your recollection, was it at the same time that you conferred with him that you handed to him, or your lawyer handed to him this memoranda which you made and is dated October 27, 1958?

A. May I see the memoranda?

Q. Yes, sir.

Mr. Haggerty: May we—as this is a pretty good copy—have it marked for identification?

Mr. Lipson: I have no objection to that at all.

[fol. 479] (Whereupon, a document was marked Defendant's Exhibit No. A, for identification, by the reporter.)

Q. (By Mr. Haggerty) I hand you the memoranda you requested, in the form of a statement, marked for identification, the Defendant's Exhibit A.

[fol. 480] A. The answer is yes.

Q. (By Mr. Haggerty): Have you had an opportunity to refresh your recollection?

A. Yes.

Q. All right. Now, sir, did you, on the 27th day of October, 1958, have an oral conversation with an Assistant United States Attorney General?

A. Again, I am not certain of the date.

Q. Did you, on or about that date, have a conversation with an Assistant United States Attorney General?

A. Yes.

Q. And where was that conversation held?

A. In Washington, D. C.

Q. And by whom were you accompanied, if anyone?
A. A patent attorney by the name of William Pavitt.
Q. And Mr. Pavitt was your attorney?
A. Yes.
Q. And prior, then, to the date of the memorandum, which is October 27th, 1958, had you had any correspondence by letter or telegram with the Assistant United States Attorneys?
A. Not to my knowledge.
Q. Had you authorized your attorney, and his name is Pavitt?
A. Pavitt, yes.
Q. And how do you spell Pavitt?
A. P-a-v-i-t-t.
[fol. 481] Q. Had you authorized Mr. Pavitt prior to October 27th, 1958, to act on and in your behalf and in behalf of Brown-Line to contact Assistant United States Attorneys?
A. I don't recall.
Q. You have no recollection?
A. I have no recollection, no.
Q. Have you any knowledge as to whether or not Mr. Pavitt, on your order and authorization, had carried on any correspondence or oral conversations with either Assistant United States Attorney Generals, or with any Investigating Officers of the United States Government, prior to October 27, '58?
A. I don't recall.
Q. Now, were you in Washington in the month of — '58, conferring with representatives of the Government on more than one occasion?

The Court: During the year '58?
Mr. Haggerty: 1958.

A. No.
Q. (By Mr. Haggerty, continuing): Did the representatives of the Government confer with you in California in the year 1958?
A. No.
Q. How many conferences or meetings in all, starting in October, 1958, up until the indictment was returned in this case, which was October the 24th, 1961, how many

conferences did you have with Assistant United States Attorney Generals?

[fol. 482] A. (Short pause.)

The Court: Your best recollection will be sufficient.

A. Yes. I clearly recall two, excluding the brief meetings I had with Government Attorneys during the Grand Jury proceedings here in the city.

Q. (By Mr. Haggerty, continuing): We will exclude them. You have a recollection, then, a distinct recollection of two meetings?

A. Yes.

Q. One was held in Washington?

A. Yes.

Q. Was—one was held where, the second.

A. In Los Angeles.

Q. And with whom did you have that conversation?

A. A Mr. Hollander.

Q. Now, did you ever have a conversation prior to the Grand Jury proceedings with either of these gentlemen here, representing the Government?

A. No.

Q. You are positive of that?

A. My present recollection is no.

Q. Your best recollection of that is no?

A. Yes.

Q. Now, you furnished an affidavit to the Department [fol. 483] on the 17th of April, 1959; did you not?

A. Yes.

Mr. Haggerty: And will you mark this for identification, please, as a Defendants' Exhibit?

Mr. Lipson: Mr. Haggerty, with your permission, may we stipulate a copy, a photographic copy of—may be made of that and the original returned to the Department file?

Mr. Haggerty: Yes, yes. I will so stipulate.

(Thereupon a document was marked for identification as Defendants' Exhibit B by the Reporter.)

Q. (By Mr. Haggerty, continuing): I will hand you what has been marked for identification as Defendants' Exhibit B, which purports to be an affidavit signed by you on the

17th day of April, 1959, and ask you: Does that bear your signature?

A. Yes, it does.

Q. Would you like to refresh your recollection from that affidavit?

A. I would, yes. Thank you. (Short pause.) My memory is so refreshed.

Q. Have you refreshed your recollection?

A. Yes.

[fol. 484] Q. Having refreshed your recollection from the affidavit, bearing date of the 17th of April, 1959, does it further refresh your recollection whether you made this affidavit voluntarily or you were requested to do so by the Government?

A. I made the affidavit voluntarily.

Q. And attached as part of the exhibit is a letter by William N. Pavitt, Jr., addressed to an Assistant Attorney General in the Anti-Trust Division. You authorized Mr. Pavitt to send that to the Anti-Trust Division; did you?

A. Yes.

Q. Now, again, a second affidavit is dated the 26th day of March, 1960. Would you like to refresh your recollection as to that affidavit?

A. Yes.

Mr. Haggerty: Will you mark that for identification, please?

(Thereupon a document was marked for identification as Defendant's Exhibit C by the Reporter.)

Q. (By Mr. Haggerty, continuing): I hand you, marked for identification, Defendant's Exhibit C, and ask you to examine it for the purpose of refreshing your recollection.

A. (Witness complies.)

Q. Have you refreshed your recollection, sir?

A. I have, yes, um-hmm.

[fol. 485] Q. Now, in reference to that affidavit, were you asked to furnish it by any representative of the Government, or did you voluntarily send it to the Government?

A. It was voluntary.

Q. You made a further affidavit on the 9th day of August, 1960; did you not?

A. I am not certain.

Mr. Haggerty: Will you mark this for identification as a Defendants' Exhibit, please?

(Thereupon a document was marked for identification as Defendants' Exhibit D by the Reporter.)

The Court: August the 9th, 1960?
Mr. Haggerty: Yes, your Honor.

Q. (By Mr. Haggerty, continuing): I hand you, marked for identification, the Defendants' Exhibit D, and ask you to examine it to refresh your recollection.
A. (Witness complies.) Yes.
Q. You have refreshed your recollection?
A. Yes.
Q. Can you state now whether you voluntarily sent this to the Government or they requested it?
A. It was sent voluntarily.
Q. Would it be a fair statement to make that the time that you sent these three affidavits voluntarily, you had an in-
[fol. 486] terest in the original complaint that you had made to the Department of Justice, Anti-Trust Division?
A. Yes.
Q. It was your purpose to have them investigated; right?
A. Yes.
Q. If there was any possible action they could pursue, you were interested to see that they did that?
A. Yes.
Q. Further, if there would be a presentation to a Grand Jury, you were interested in that?
A. Yes.
Q. And if an indictment was returned against these two corporations and these two individual defendants, you were also interested in seeing that that was done?
A. Yes.
Q. Yes. Do you say—I will strike that.
At the present time, then, would it be a further fair statement to say that you are a witness with an interest in the outcome of this present case?
A. Yes.
Q. And your interest is, if possible, to see all of these defendants convicted; isn't that true?
A. No.

Q. No. Isn't it within your line of interest that they should be convicted?

[fol. 487] A. Yes.

Q. Now, you have cooperated in every way that you have known how with the Government?

A. Yes.

Q. You have not only complied with their requests, but you have voluntarily given information?

A. Yes.

Q. And you have not only appeared as a witness, Mr. Looker; you have done considerable reading to take the load off of the vocal cords of my brother; isn't that true?

A. Apparently.

Q. Yes. Now, Mr. Looker, did I understand you correctly as to when you started your connection with the Huck Manufacturing Company?

A. I don't know what you understood.

Q. I understood it was in 1947. Am I right?

A. That is correct.

Q. All right. Now, you worked up to a position of a Sales Manager; did you not?

A. Yes.

Q. And what year did you become Sales Manager?

A. 1954.

Q. And you remained Sales Manager; did you have a title in addition to Sales Manager in '54?

A. May I correct my last answer?

[fol. 488] Q. You may correct it.

A. The year was 1952 when I became Sales Manager.

Q. You became Sales Manager, but you were under an immediate superior, the Vice President in Charge of Sales?

A. Correct.

Q. And that was whom?

A. A Mr. Frank A. Dobbe.

Q. And you worked under Mr. Dobbe until his retirement?

A. Correct.

Q. And you became a Vice President in Charge of Sales in 1956?

A. Correct.

Q. And when in 1956?

A. Excuse me. May I correct my answer? In 1954.

Q. In 1954. Now, as Vice President in Charge of Sales, were you on the Board of Directors of the corporation?

A. No.

Q. And you were in complete charge of sales; were you not?

A. Yes.

Q. You had the supervision of the men out in the field actually doing the selling work?

A. Yes.

Q. You had supervision of your own staff, clerical, in your department?

A. Yes.

Q. And to whom were you responsible for results?

[fol. 489] A. Directly to Mr. Alfred E. Benkert.

Q. Who was the Executive Vice President?

A. Correct.

Q. Now, going back to 1951, what was your status in employment with Huck?

A. As far as I can recall, I had the title of Manager of Technical Publications.

Q. And it was in 1951 as Manager of Technical Publications, that you flew with Mr. Huck to Pennsylvania to visit the factory of Townsend; is that true?

A. Yes.

Q. Now, you have stated the persons that you recall were there in 1951 and on the Huck side of the picture, you have placed yourself and Mr. Huck, who was then alive, and who else?

A. That is all I recall of having been on that trip.

Q. I will ask you: Does it refresh your recollection if I stated that Mr. Sterritt was there, and that Mr. Armour was there?

A. It doesn't reflesh—refresh my recollection. I believe you, but is doesn't refresh my own recollection.

Q. You wouldn't deny that they were there?

A. No.

Q. Now, as representing Townsend, Mr. Dickenson was there?

A. Yes.

Q. And who else? Mr. Horst?

[fol. 490] A. Well, I don't recall who else was there.

Q. Was there a lawyer representing Mr. Dickenson there? A. I don't recall.

Q. Do you recall anyone representing Townsend other than Mr. Dickenson?

A. I recall a meeting where there were several people present, but I don't recall who they were other than those previously testified to.

Q. I see. Now, was there any discussion in your presence and hearing in reference to a license to be granted for the manfacture, use and sale of the lockbolt from Huck to Townsend at that time?

A. Yes.

Q. Now, will you indicate who raised the subject of a license at Pennsylvania?

A. I don't recall.

Q. And there was a request from Townsend to the representative of Huck for a license; is that correct?

A. I don't recall who made the request.

Q. You don't recall.

The Court: This would be a good time to take a recess.

Mr. Haggerty: Very well, your Honor.

(Thereupon a recess was taken.)

[fol. 491] (By Mr. Haggerty, continuing): Mr. Looker, if I stated that Mr. Dobbe was at the meeting at New Brighton, Pennsylvania in 1951, would you deny it?

A. No.

Q. You have no recollection, however, of his being there; is that correct?

A. Yes.

The Court: Yes, you have no recollection; is that it?

A. That is correct, yes.

Mr. Haggerty: Sounds like a quiz program.

(Laughter.)

Q. (By Mr. Haggerty, continuing): Now, Mr. Looker, as a result of that meeting, Mr. Huck made the decision that no license was to be granted to Townsend to manufacture, use and sell lockbolts; is that correct?

A. Yes.

Q. And Mr. Huck made that decision, himself?

A. Yes.

Q. Now, continuing on, Huck and Townsend became involved in a lawsuit; right?

A. Yes.

Q. It was Huck's contention that Townsend had infringed their patents by Townsend manufacturing a lockbolt?

A. Yes.

[fol. 492] Q. And as a result of that, the suit was instituted by Huck against Townsend in the United States District Court at Pittsburgh, Pennsylvania?

A. Yes.

Q. And the cause was transferred by that District Court to the United States District Court at Los Angeles, California?

A. Yes.

Q. And a trial was had?

A. Yes.

Q. It was a full dress trial; was it not?

A. Took a long time.

Q. Yes. And Huck was represented by its counsel?

A. Yes.

Q. And as a matter of fact, it was Mr. Dickey that represented Huck; isn't that true?

A. He was one that tried the case.

Q. Yes. Well, that is usually the fellow that represents them.

A. I believe that the representation was made by Lyon & Lyon, a California attorney. Mr. Dickey was the one that was introduced to the Court and tried the case. however.

Q. Yes. And Townsend was represented by counsel?

A. Yes.

Q. And you were present during the course of that trial?

A. Yes.

Q. And you appeared as a witness in behalf of Huck; did you?

[fol. 493] A. Yes.

Q. And as you say, the case took considerable time?

A. Yes.

Q. And based upon your observation, it was thoroughly tried; was it not?

A. Yes.

Q. And as a result of that trial, the United States District Judge found that Townsend, in the manufacture of its lockbolt, had infringed the patents of Huck; isn't that true?

A. Yes.

Q. Then, following that, an appeal was taken through the Court of Appeals from the decision and judgment of the Trial Court, the District Court; isn't that true?

A. Yes.

Q. And that appeal was awaiting argument and decision in the year 1954?

A. Yes.

Q. And it was in 1954 that you became a Vice President in Charge of Sales?

A. Yes.

Q. Now, in the month of May, 1954, specifically, I believe on the 4th day of May, there was a meeting of the committee of the Huck Manufacturing Company, considering—to consider whether or not to license Townsend; isn't that true?

A. I don't have independent recollection of the date. [fol. 494] The documents in evidence by the Government indicate that meeting was held on the 5th, I believe.

Q. May the 5th, all right, sir. Now, prior to that meeting, did you make any notes of recommendation, anything in writing as to recommendations as to whether or not to issue a license by Huck to Townsend?

A. No.

Q. Following the meeting, however, you made a resume, did you not, for the pros and cons and made a statement to that effect; did you not?

A. I believe not.

Q. You believe not. Would you state positively you did not?

A. I do not speak from independent recollection, but I believe that the Government's Exhibits do indicate that the memorandum made by myself discussing the pros and cons of issuing a patent license and the pros and cons of issuing a patent license to the Townsend Company were made prior to the meeting of May 5.

Q. Well, then, at the time that the meeting of May 5 was held, did the company or the committee have the

advantage of your pros and cons that you had drawn up in reference to a license?

A. Yes.

Q. And in reference to a license of Townsend?

A. Yes.

[fol. 495] Q. So, your recollection is, then, that prior to the meeting you had reduced to writing, at least, your opinion and your recommendation as to whether or not to issue a license from Huck to Townsend?

A. No.

Q. What were these papers that you drew up, if they were not recommendations?

A. They were—I believe the papers speak for themselves——

Q. (Interposing): I am asking you——

A. (Continuing: —but I can give you my opinion.

Q. (Continuing: —what your intent was?

A. The intent was to show those concerned with making such a decision what some of the factors involved were, both for issuing a license and against issuing a license, and for issuing a license to the Townsend Company and against issuing such a license.

Q. That was your analysis of the problem that you submitted?

A. Yes.

Q. And the company had the bene- —the committee had the privilege of having that before them when they discussed on this meeting of May 5th the possibility of licensing Townsend; isn't that true?

A. Yes.

Q. Now, following that meeting on May the 5th, 1954, when did you next attend a meeting with the Huck people [fol. 496] in reference to issuing a license to Townsend?

A. I don't have independent recollection.

Q. I will ask you: Have you a recollection of whether or not subsequent, or after May the 5th, 1954, there was a meeting which you attended of the Huck officers or committee in reference to licensing Townsend?

A. I am certain that there must have been such a meeting or many meetings. I don't recall just exactly when they were.

Q. Do you recall any specific meeting, as to the date of any specific meeting?

A. You are speaking of a meeting between myself and other Huck officers?

Q. Yes, sir.

A. Not including negotiation with the Townsend Company.

Q. No, sir.

A. I don't have independent recollection of such a meeting.

Q. Now, did you, subsequent to May the 5th, 1954, have contacts with Mr. John Sterritt, the patent lawyer, in reference to licensing to Townsend from Huck?

A. Although I don't recall specifically seeing Mr. Sterritt, I can testify that I did have such meetings. I don't recall any of them, but I am sure that I did.

Q. And was——

A. (Interrupting): Nor can I so testify.

Q. And was the purpose of those meetings to discuss the [fol. 496a] license to Townsend?

A. Yes.

[fol. 497] Q. Could you say how many meetings you had with Mr. Sterritt?

A. I cannot. I'm certain that there must have been many.

Q. Now, you have testified on direct examination that in the month of August, 1954, at the office of Harness, Dickey and Pierce, in the General Motors Building, there was a meeting between representatives of Huck and representatives of Townsend; is that correct?

A. The month of August was something I don't believe I did testify to.

Q. You don't believe you testified to it?

A. It—I—I don't believe I did, no.

Q. If you did testify, were you in error?

A. I don't say that I am in error. The month of August brings to mind no independent recollection.

Q. It brings your independent recollection?

A. It brings to mind no independent recollection.

Q. I see. Well, then, I don't quite understand your answer. It brings to your mind no independent recollection. How many kinds of independent recollections have you?

A. Just one.

Q. Just one. And it is of no recollection?

A. I don't understand your question. Would you rephrase the question?

Q. I'll ask you, you have said that your independent recollection is to the effect that there was no meeting in [fol. 498] August? Do I understand you correctly?

A. No, you do not.

Q. Was there a meeting in August?

A. I don't know if there was a meeting in August or not.

Q. What other month could it have been in—or months?

A. The meeting referred to could have been in the month of June, month of July, the month of August, or, even possibly, the month of September.

Q. Within those four months that you have enumerated.

Now, do you recall that on the 2nd day of June, 1954, there was a meeting by and between representatives of Townsend and representatives of Huck?

A. No, I do not.

Q. To refresh your recollection, do you recall that, representing Huck was Mr. Armour, Mr. Benkert, yourself, Mr. Sterritt, and Mr. Ketchum. I strike Mr. Ketchum. Mr. Dobbe?

A. I don't recall the month of June as—the point that I'm making, I recall a meeting held between the month of May and the month of September. I don't recall that it was in the month of June or on the 2nd of June.

Q. Well, now, you have added another month.

So we have May, June, July, August and September, a five-month span. I'll ask you specifically, isn't it true that on June the 2nd, 1954, there was a meeting in the office [fol. 499] of Harness, Dickey and Pierce, at which you were present, Mr. Armour, Mr. Dobbe, Mr. Benkert, and Mr. Sterritt, representing Huck, and Mr. Dickenson, Mr. Ketchum, and Mr. Johnson represented Townsend?

A. I don't know.

Q. Is it that you deny it or that you have no recollection of it?

A. I have no recollection of a meeting on the 2nd of June.

Q. Just a recollection of a meeting in the month of May, such as I have described between those persons?

A. No.

Q. It is your recollection that you only attended one meeting between the representatives of Townsend or of Huck, including yourself, with the representatives of Townsend in the office of Harness, Dickey and Pierce, within that five-month span, from May to September?

A. Yes.

Q. Would you state positively that no meeting did take place in June of 1954, such as I have described?

A. No.

Q. Now, a meeting was held, one meeting was held that you have recollection of; right?

A. Yes.

Q. A meeting was held, according to records on the 5th day of August, 1954. Have you any recollection of that [fol. 500] meeting, at which you were present?

A. I've no recollection of a meeting having been held on the 5th day of August, 1954.

Q. Now, after the meeting of August the 5th, 1954, which will be established by other witnesses as the date, and possibly documentary proof, you returned to your duties—or whenever this meeting was held in your mind, you returned to your duties as vice president in charge of sales for the Huck Manufacturing Company?

A. Are you referring to the meeting that I previously testified to in Mr. Harness' office?

Q. Yes, the one you testified to in some detail on direct examination at Harness, Dickey and Pierce's office?

A. Yes.

Q. Now, is it within your knowledge that, as the result of that meeting and as the result of subsequent negotiations between the parties, a contract was reduced to writing?

A. Yes.

Q. And you are familiar, are you not, with the terms of that contract?

A. Superficially.

Mr. Haggerty: May we have the contract, please?

Mr. Lipson: It's on the table.

Mr. Haggerty: It's on the table?

Mr. Lipson: Exhibit 17.

[fol. 501] Mr. Haggerty: That's the contract of September 14, 1954.

The Court: Exhibit 17.

Mr. Lipson: May I offer my assistance?

Mr. Haggerty: I would be happy to receive it.

Mr. Lipson: Here it is (indicating).

Q. (By Mr. Haggerty) I hand you the Government's Exhibit 17, and I ask you to refer to a clause in the agreement as to whether or not—after you have read it, will you tell us whether or not there is a clause that established that this contract is exclusive for a period of two years?

A. Yes.

Q. Now, will you read that clause, please, indicating what clause it is, and will you read it—what paragraph?

A. Page five, Paragraph 12, subparagraph (a).

(Reading):

> "Huck agrees that for the first two years of the present license, the license herein granted to Townsend shall be exclusive to Huck and Townsend for the lockbolt devices offered for sale by Huck, unless during that period of two years a national emergency shall require the production of lockbolt devices for United States Governmental use which cannot be satisfied by the combined facilities of Huck and Townsend; then [fol. 502] Huck may grant a license to another source in the event that it is requested so to do by a United States Government agency."

Q. Now, sir, you have stated that you have a practical knowledge of patents but you are not a patent lawyer, not formally trained; isn't that true?

A. I don't know that I made such a statement; no.

Q. Well, didn't you, after the death of Mr. Huck, represent the Huck Manufacturing Company in its dealings with its patent lawyers?

A. Yes.

Q. Yes. So, you have some knowledge of patents?

A. I have never claimed to be competent in that field.

Q. Have you sufficient knowledge, having read that clause, to state that for a period of two years after the date of the agreement that the license that was granted by Huck to Townsend was exclusive?

A. It was exclusive to both Huck and Townsend, with the stipulation of the Government that——

Q. (Interposing) As a practical matter, doesn't it convey to you that Huck during that period of two years could not license any other company or individual to manufacture, use and sell lockbolts that were covered by this agreement?

A. Except for the stipulation of the emergency..

[fol. 503] Q. Yes, the emergency, National emergency; isn't that true?

A. Yes.

Q. So, when you have talked about various companies, and the Government has used various exhibits where there have been requests for lockbolt licenses within that two year period, it was then beyond the power of Huck legally to license these applicants within the two year period; isn't that true?

A. Yes.

Q. Now, will you turn to that portion of the exhibit that you have in your hand and find out if there is a provision as to the maintenance of price for a period of two years?

A. Yes, there is such a provision.

Q. Will you read it, please, after indicating the paragraph number?

A. Paragraph—correction—page five, paragraph 12, subparagraph (b).

(Reading):

> "Townsend agrees during said two-year period to maintain at least Huck's prices on lockbolt devices manufactured and sold by Huck according to Huck's published current price schedules as changed from time to time and computed according to Huck's published Standard Pricing Policy, which will be furnished Townsend by Huck, except that Townsend's prices shall be computed F.O.B. Townsend, New Brighton, [fol. 504] Pennsylvania."

Q. Now, doesn't that paragraph convey to you for a period of two years that Townsend was bound legally not to sell lockbolts manufactured by them for a lesser price than Townsend set on those lockbolts?

Mr. Lipson: Your Honor, I object to the question. It's asking for a legal conclusion from a lay witness.

Mr. Haggerty: I don't think so. It's a practical question.

The Court: He may answer.

A. May I hear the question back?

(Whereupon, the last question was repeated by the Reporter.)

Q. (By Mr. Haggerty, continuing) What does it convey to you, then, as to this price?

You were the Sales Manager, were you not?

A. Yes.

Q. Vice president in charge of sales?

A. Yes, sir.

Q. That's a higher title, a higher echelon than sales manager.

Now, you have related to us that you received complaints from time to time from your sales force to the effect that Townsend was selling lockbolts cheaper than Huck; isn't that true?

A. Yes.

[fol. 505] Q. And when you received those complaints, you attempted to do something about it, didn't you?

A. Yes.

Q. Now, why did you attempt to do something about it?

A. Because of the agreement that I hold in my hand (indicating).

Q. Because you had a legal right to do something about it created by that agreement, did you not?

A. Yes.

Q. Yes. And what legal right did you have that you investigated and enforced?

A. We had the right to terminate the patent license here if the Townsend Company sold lockbolt devices for prices less than that charged by Huck during this stipulated two-year period.

Q. Yes. No disagreement about that?

A. No.

Q. No. And that right was created by the agreement itself; isn't that true?

A. Yes, it is.

Q. And I'm referring, when I say "disagreement", to the Government's Exhibit 17.

May I have from the Government the following exhibits? Government's Exhibits 24, 26, 27, 28 and 30?

Mr. Lipson: I believe all those exhibits are on the Clerk's table, Mr. Haggerty.

[fol. 506] Q. (By Mr Haggerty, continuing) Now, prior to the institution of the suit by Huck against Townsend for infringement of their patents on the lockbolt, there have been certain difficulty with Cherry over selling or attempting to sell their lockbolt to Huck customers; isn't that true?

A. We have considered them difficulties, yes.

Q. Yes. And isn't it a fact way back in September, '51, the Cherry Division of Townsend had sold or taken an order for certain lockbolts of their manufacture to Convair, a customer of Huck?

A. Well, I can't independently recall the date.

Q. Well, you remember the incident, do you not?

A. I do.

Q. Yes. I hand you the Government's Exhibit 24, and ask you if that refreshes your recollection as to the date?

A. The date shown is September 4th, through September 7th.

Q. All right, sir.

A. '51.

The Court: What year?

A. 1951.

Q. (By Mr. Haggerty, continuing) Yes. As a matter of fact, you were one of the persons that went to Convair to notify Convair that they were purchasing from Cherry Rivet Division of Townsend an article which Huck claimed was an infringement of their patent; isn't that right?

[fol. 507] A. Again there's a legal matter here. I'm not certain that there was infringement at that time claimed by Huck.

Q. Well, didn't you make some representation to Convair?

A. As best I recall, the representation made to Convair by Mr. Huck was that patents would issue which would cover these constructions.

Q. All right.

A. But they—I don't believe—I don't recall that they had issued at that time.

Q. All right, that patents would issue; the patent had been applied for and would issue——

A. (Interposing) I believe so.

Q. (Continuing)—is that right?

A. I believe so, yes.

Q. Yes. And, as the result of the representation that was made to the agent of Convair, they cancelled the Cherry Rivet contract; isn't that right?

A. I don't know all the reasons that they had when they did cancel such a contract. I'm aware of the fact that that contract was cancelled.

Q. Yes. And your visit to Convair was part of your duties, was it not, at Huck?

A. I think at the time it was a supernumerary duty.

Q. Now, you know, do you not, having knowledge of the manufacturing business, particularly manufacturing of [fol. 508] and article or articles under Letters Patent, there must be constant vigilance practiced by the holder of the patent who manufactures the article to see that there is no infringement of their patent by others who hold no license from them; isn't that true?

A. Yes.

Q. And what was practiced here was the vigilance that is required—in this instance with Convair and Cherry Rivet was the vigilance that is necessary to protect the patent once it's issued to you?

A. I assume that to be correct.

Q. Yes. Now, as of February, 1953, consideration was given by Huck to possibly licensing Townsend; isn't that true?

A. As of what date?

Q. In February of 1953?

A. (No response.)

Q. Well, to assist your recollection, I hand you the Government's Exhibit 26 (handing exhibit to witness).

A. The answer to the question is yes.

Q. Yes. And that's a copy of a letter that was written by you or an interdepartmental correspondence written by you?

A. Yes.

Q. And in that correspondence you state, in part, on February 3rd, 1953, (reading):

> "It is requested that the recipients of this memo-
> [fol. 509] randum give their thorough consideration to the latest proposal of the Townsend Company as expressed in Dickenson's letter of January 20. Although we have successfully weathered the threat of infringement and patent invalidity for the Lockbolt Townsend still holds over our head the threat of appeal."

Now, that was something that was discussed and was weighed by Huck, isn't that true, the threat of an appeal?

A. Yes.

Q. (Reading):

> "Probably more—" Huck had won in the lower court, hadn't he?

A. They had won, the patent infringement suit, yes.

Q. (Reading):

> "Probably more important than the threat of appeal is the threat of redevelopment so as to avoid our valid lockbolt patents."

Now, by that you meant there was the possibility that Townsend or some other manufacturer could develop a device that would serve the same purpose as the lockbolt but it would not invalidate the lockbolt patents; isn't that true?

A. I think the concern here was the probability, rather then the possibility.

Q. All right, the probability.

A. And the——

Q. (Interposing) As you will have it.

[fol. 510] A. And that the "invalidate" perhaps should be changed to infringe lockbolt patents. I'm not certain that I have this question correct.

May I hear it back, please?

Q. Would you like me to rephrase it? I shall.
A. I don't care.
Q. You state in your letter (reading):

"Probably more important than the threat of appeal is the threat of redevelopment so as to avoid our valid lockbolt patents."

Now, I'm inquiring of you, did you mean by that that there was, as you prefer it, a probability that some other manufacturer would come out on the market with a device that would serve the same purpose as lockbolts but not infringe the lockbolt patents?
A. The intent at the time of writing that memorandum was that the Townsend Company would do such.
Q. Specifically that the Townsend Company would do such?
A. Yes.
Q. And you have stated (reading, continuing):

"Stubbornness and refusal to accept the defeat have already shown themselves quite clearly as characteristics of the Townsend Company, and in the event that they lose they appeal to the Ninth Circuit Court——" [fol. 511] The word is "they appeal". It should be "their appeal".

It's probably in the transcription.
A. Perhaps in dictation, too.
Q. I'm giving you the benefit.
A. Thank you.

The Court: Always blame it on your secretary.
Mr. Haggerty: How, your Honor?
The Court: Always blame it on your secretary.

Q. (By Mr. Haggerty, continuing reading):

"——their next course of action would logically be development of a Lockbolt type fastener which would avoid our patents and perhaps obsolete the lockbolts which we have developed."

You seem to have had an opinion that Townsend, that the Townsend outfit was stubborn, refused to accept defeat and were tenacious; is that true?

A. Yes.

Q. Now, I hand you the Government's Exhibit 27 (handing exhibit to witness). I think all that was received in evidence. Correct me if I am wrong.

Mr. Lipson: I shall.

Mr. Haggerty: It was the first three pages and fourth page, am I right?

Mr. Lipson: And the signature page to the letter, of [fol. 512] which the fourth page——

Mr. Haggerty: (Interposing) All right, and the signature page.

Q. (By Mr. Haggerty, continuing) I'm referring to Government's Exhibit 27, and I will ask you if this is what you prepared to be given the committee that met on May 5th, 1954, to consider a patent license to Townsend?

A. Yes, it is.

Q. Yes. Now, for the first time there appears in writing, which was prepared by you (reading):

> "Should a Huckbolt license and second source for Huckbolts be established at this time?"

And you put down in your analysis (reading):

> "*Factors For:*
>
> "1. With a second source, labor negotiations would be facilitated."

What did you mean by that?

A. As best I can recall, the intent of that sentence was based on my understanding that the company had from time to time a great deal of difficulty negotiating their labor union contracts; further based on the understanding that the union and the local union—whom we dealt with, was very tough and that they were difficult to negotiate with and that they constantly held during these times over the head of the company the threat of strike.

[fol. 513] The existence of a second source for fabrication of lockbolts at the time appeared to me to be a deterrent to the strong position which the unions held in that did such a strike occur, the customers of the company would have someplace else to go and therefore the company might

stand the chance of losing those customers, while with a single source, the customers had no other place to go, and the union's position, therefore, under those circumstances was very strong.

In a highly competitive market, my opinion at that time, as I recall, was that unions do not have such a strong position in negotiating because of the threat of loss of business of the company and employment in their ranks.

Q. Well, you wouldn't deprive the union of the one weapon it had—namely, to strike, would you?

A. No.

Q. Now, as reason number two (reading):

> "It is felt that more than one source is required in order to develop a greater over-all market for the Huckbolt fastener i.e."

—id est—

> "two sources can sell more than twice as much as one source."

Was that your opinion?

[fol. 514] A. Yes, it was.

Q. (Reading):

> "3. Royalty income should be of appreciable benefit without capital expenditure of this company."

I don't think anyone could argue with you on your logic in that.

(Reading):

> "4. Secondary sources may hasten the development and expansion of driving tool production and help lessen our greatest sales drawback, that is, rivet driving tools."

Now, as the fourth one, I take it that driving tools had not kept abreast of the development and use of the lockbolt; is that true?

A. Yes.

Q. So there will be no question, while you use the word

"Huckbolt," you are referring—lockbolt and Huckbolt are interchangeable terms?

A. Yes.

Q. Now, you say as factors against (reading):

"With patent infringement appeal not yet heard, there is a chance that any know-how information which we might transmit at this time could be used [fol. 515] against us if the lower Court's decision on patent validity and/or infringement were reversed.

"2. The licensee's first customers would probably be our customers and we would suffer a dip in business until such time as the licensee could establish customers of their own which we could draw upon.

"3. Unless there was some price restrictions keeping the licensee from selling appreciably below our published prices, we could suffer badly in competition because of our high labor rates, etcetera."

In other words, if you would issue a license, it's a possibility that the licensee could manufacture cheaper than Huck, first of all, because of a lower labor rate in some parts of the United States than in Detroit; is that right?

A. Yes.

Q. (Reading):

"Poor Huckbolt manufacture could cause some trouble in the field and hurt the Huckbolt's reputation from an over-all standpoint."

In other words, Huck was concerned with them adhering to the quality of its product; isn't that true?

A. Yes.

[fol. 516] Q. And if a licensee should poorly manufacture Huckbolts or lockbolts and that became known in the field, it could hurt the general reputation of the product?

A. Yes.

Q. And inure to the detriment of Huck?

A. Yes.

Q. Now, as a matter of fact, on the quality of lockbolts, airplanes or—used for airframe lockbolts have to be carefully made, isn't that true, the close tolerances?

A. They all do.

Q. Yes, but particularly airframe?

A. Your—is your question relating to the difference in tolerances between air—airplane and non airplane lockbolts or the difficulty in manufacture? I don't understand the question.

Q. I'll answer your question by asking you one.

Aren't there minimum requirements demanded of a manufacturer of such a device as lockbolts before it can be accepted by the United States Government, for instance? Isn't there a national association of standards that sets standards?

A. There's such an association that sets standards, yes. That is not a Government agency.

Q. No, that's created by the manufacturers themselves?

A. Airframe manufacturers, generally, yes.

[fol. 517] Q. Yes. And they have set minimum standards; isn't that true?

A. Are you asking about lockbolts?

Q. Yes.

A. They have, yes.

Q. Yes. And if they do not meet those standards, they're rejected; the lockbolts do not meet the minimum standards, they are rejected?

A. If they're sold under those standards, yes.

Q. If they're sold under those standards?

A. Yes.

Q. Yes.

A. They're rejectable.

Q. Now, lockbolts that are made for airframes are rather expensive to make?

A. Is your question related to comparison of——

Q. (Interposing) My question would be by comparison with lockbolts that are made for commercial purposes.

A. Rather expensive—rather—more expensive?

Q. Yes.

A. To some extent, yes.

Q. The alloy of the steel that is used is far more expensive than the steel that is used in commercial lockbolts; isn't that true?

A. There's a difference in price. I don't know the exact difference in price.

[fol. 518] Q. Now, going on, you say (reading):

"What should be the requirements of our potential Huckbolt licensee?

"1. A manufacturer equipped to produce Huckbolt pins and collars complete in diameters through ½" at least.

"2. A fastener manufacturer who has the reputation and skill in producing fasteners in volume production to close tolerances."

In other words, this work, the manufacture of lockbolts required close tolerances, did it not?

A. Yes, it does.

Q. (Reading):

"A fastener manufacturer—" What do you mean by close tolerances? I'm a layman, not an engineer or a patent lawyer and most of the members of the Jury are in the same position. Some may have scientific knowledge. What do you mean by close tolerances?

A. An engineering drawing specifies a certain dimension and it also specifies the acceptable deviations from that dimension. The deviations from the established dimensions are called tolerances. If the deviations permit only slight variance, they're considered to be close.

Q. Thank you for the definition.

(Reading):

"A fastener manufacturer having a sales organization operating preferably in industries and locations [fol. 519] where our coverage is not great."

Now, what did you mean by that?

A. Our sales organization at the time of this memoranda was written covered certain industries rather completely. It did not cover other industries well at all.

Q. (Reading):

"A fastener manufacturer who utilizes ethical sales and business practices by practice and reputation."

Now, I presume an explanation of that would be that you wanted a fastener manufacturer of good, ethical business standard reputation?

A. Yes.

Q. In the manufacture, in the sale of the product; is that correct?

A. Yes, it is.

Q. Yes. Now, you cover (reading):

"Should the Townsend Company be considered for a Huckbolt license at this time?

"Factors For:

"1. Townsend already has considerable capital invested in the Huckbolt and it is possible that they will try, through redevelopment, to avoid patents which have been issued. We have been a thorn in their side [fol. 520] and will continue to be so until they have the Huckbolt on the market.

"2. Townsend has the threat of appeal held over our head and the possibility that our patents will, in the future, be declared invalid and/or not infringed by the present Townsend construction.

"Factors Against:

"1. If Townsend is licensed, the Huckbolt will probably be a product of the Cherry Rivet Division and their sales strength is in exactly the same area where our sales strength lies. Consequently, they will tend to merely take part of our business rather than establish their own.

"We tend to quarrel with the Townsend Company and our old wounds and their old wounds have not healed. Such an atmosphere would not be healthy in these negotiations or practical considerations after the negotiations:

"3. We have doubt as to Townsend's ability to manufacture the Huckbolt properly."

What did you mean by that?

A. We still—perhaps I still considered the Townsend

Company a manufacturer of barnyard fastener devices, so to speak.

Q. What do you mean by "barnyard fastener devices"?

[fol. 521] A. This is a term that Mr. Huck used to use before his death to describe——

Q. (Interposing) How do you interpret barnyard? Does it have to do with latches on barndoors and pig sties and—or what?

A. It was a term that he used to describe the conventional rivets manufacturer's operation.

Q. And that it what you meant?

A. That is correct.

Q. You don't mean that Townsend was confined to making locks to keep a bull in a pen or chickens from flying around or anything of that kind; you meant that their work was not as fine a tolerance and quality as was required to manufacture lockbolts? It that what you meant?

A. Yes.

Q. I see. (Reading):

> "We have doubt as to Townsend's ability to effectively sell a specialized fastener like the Huckbolt as Townsend's sales are geared to conventional barnyard fasteners while the Cherry Sales organization is almost totally integrated within Townsend with the exception of their West Coast aircraft sales which make up a very great portion of our Huckbolt business, as you know."

[fol. 522] Now, that is the analysis that you gave to the committee prior to the May 5th meeting, right?

A. Yes.

Q. And I presume that those points, factors for and factors against, were considered and discussed by the committee?

A. I also so assume that. I don't recall it independently each of those factors having been discussed.

Q. Didn't you naturally advocate what you had thought and put in writing? Didn't you do considerable talking at that meeting of May 5th?

A. I don't specifically recall. I would have, probably.

[fol. 523] Cross-examination. (Continued)

By Mr. Haggerty:

Q. I hand you Government's Exhibit 30, and ask you to read it to refresh your recollection.

You have read it?

A. Yes, I have.

Q. Now, in this letter or departmental correspondence from yourself to Mr. Armour, Mr. Benkert, Mr. Sterritt and File, File is not a person, you mean by that a file of the Huck Company, isn't that true?

[fol. 524] A. Yes.

Q. (Reading):

"As you know, I met with John Sterritt Tuesday last——"

This is dated June 23, 1954——

"To discuss the Townsend and Illinois Tool agreements. John's final draft of June 22nd on the Townsend agreement appears to be the final draft and he will be ready to send same along to Johnson just as soon as he gets concurrence from us.

"I have read the agreement over and it appears to be very good and most favorable for both Townsend and Huck. If we may have your concurrence, we would like to proceed."

Now, does that refresh your recollection that inasmuch as you recite that John Sterritt had made a final draft on June 22nd, that there had been a meeting between the representatives of Townsend and the representatives of Huck prior to June 22nd in order to enable John Sterritt to draft a proposed agreement?

A. It does not serve to give my memory that degree of reflection, no.

The Court: You mean as to date, or what do you mean?

A. The data.

[fol. 525] The Court: The exact dates, is that what you are referring to?

A. Yes. Yes, I am.

The Court: Do you remember that there were meetings?

A. There were meetings, yes, with Mr. Sterritt and myself.

The Court: All right.

Q. (By Mr. Haggerty) There were meetings between the representatives of Huck at which you were present, prior to June 22nd, in the year 1954?

A. I don't know.

Q. You have no recollection?

A. I don't know. I don't have the recollection of the date.

Q. Isn't it a fact that John Sterritt could not have drawn a final draft without obtaining the opinions of both sides, that is, Townsend and of Huck?

A. Well, that which might have been considered a final draft at that date may not have been the final draft. I don't know.

Q. I appreciate that. But, what you call a final draft, the complete agreement, doesn't it occur to you that there must have been a meeting between the representatives of Huck and the representatives of Townsend before June 22nd, 1954?

A. That would be a conclusion of mine, yes.

Q. But you have no recollection, sir, of that meeting?

[fol. 526] A. I have no recollection of the date of the meeting I previously testified to.

Q. Now, we have gone over some length what you entitle factors relating to the establishment of a second source of Huckbolt manufacture by license agreement before the noon hour.

Now I hand you the Government Exhibit's 28 and ask you to refresh your recollection.

You have refreshed your recollection, sir?

A. I have, yes.

Q. All right. Now, the Government's Exhibit 28 is dated May the 5th, 1954. That is the date that you dictated this agreement, or that you dictated this notation as contained on Government's Exhibits 28?

A. That would be my normal practice, yes.

Q. Yes. Then you dictated it the same day that the committee of Huck had the discussion on whether or not to grant a lockbolt license?

A. Yes.

Q. Now, as a result of that, you addressed to Mr. Armour, Mr. Benkert, Mr. Dobbe, Mr. Brilmyer, Mr. Orloff, Mr. Stern, Mr. Sterritt, Mr. Reynolds and a file copy.

This departmental correspondence, as evidenced in the Government's Exhibit 28?

A. Yes.

Q. And this is what you have to say:

[fol. 527] (Reading):

"The following is a quick resume of points relating to future discussion for a lockbolt license.

"We should offer——

"We should proceed——

"1. We should proceed with issuing a lockbolt license.

"2. We should offer a lockbolt license to Townsend under the following general conditions:

"A. That Townsend agree to manufacture and make available to industry lockbolts 5/16" in diameter through at least 5/8.

Then there is in red pencil—was that red pencil—did you make that correction?

A. No.

Q. You did not. You don't know who did make it?

A. Yes.

Q. Who did make it?

A. Mr. Armour.

Q. Mr. Armour. All right, sir.

And on the notation it says:

"½——

The next word I can't make out——

"½ research on 5/8 to be done later.

"That lockbolts be manufactured and distributed by [fol. 528] Townsend—not Cherry."

In other words, they would be distributed under the Townsend name, not the Cherry Rivet name, is that true?

A. Yes.

Q. (Reading):

"That lockbolts and collars be suitably identified to prevent field mixing."

And what do you mean by that?

A. So that if there was any difficulty with the installation of lockbolts in the field, or difficulty with the installed product after it had been installed, that the manufacturer could be suitably identified so that we wouldn't get the blame for any difficulties that may have originated by virtue of the Townsend manufacturer.

Q. Well, then on each and every lockbolt, then, there would be placed some identifying inscription?

A. That was the intent, yes.

Q. One of Huck and one for Townsend?

A. As long as the two could be kept apart, it could only be on one.

Q. Only on one?

A. It could be. I don't know how it was worked out.

Q. But, at least, the manufacturer or the eventual consumer in the use of them, should be able to tell whose lockbolt they were handling, is that the idea?

A. Yes.

[fol. 529] Q. (Reading):

"That the license be cancellable if Townsend inferior quality hurts Huck."

In other words, according to this notation, there was still doubt lingering in the mind of the Huck people and of yourself, or at least some of the Huck people, as to the ability of Townsend to provide the proper quality of lockbolts, is that true?

A. Yes.

Q. (Reading):

"That Huck give Townsend manufacturing drawings and specifications for lockbolts and collars.

"The license to be non-exclusive."

In other words, any license granted by Huck to Townsend would be a non-exclusive license?

A. Yes.

Q. As to royalties, (Reading):

"Commercial business—7½%. Aircraft—5%.

"That we should determine Townsend's machinery and equipment not available for lockbolt manufacture on through ⅝" in diameter.

"Points not fully discussed.

"Should Townsend sell lockbolts or Huckbolts."

As you originally wrote it.

[fol. 530] (Reading):

"Price maintenance provisions."

Now what did you mean by price maintenance provisions?

A. I believe the intent there was to put some provision in the subsequent license agreement such that the Townsend Company would not be permitted to sell lockbolts at prices lower than prices established for comparable parts by Huck.

Q. I see. (Reading):

"Minimum royalties."

That is, that they were to pay a royalty in dollars—a certain amount of dollars, they would have to pay that X amount of dollars in minimum royalties if they sell that many lockbolts or not, is that true?

A. Yes.

Q. (Reading):

"Improvements.

"Termination.

"Favored license clause."

What do you mean by a favored license clause?

A. I think I meant rather than favored license clause, favored nations clause.

Q. Well, I presume they can be used interchangeably,

but what do you mean by either favored license clause or favored nations clause?

A. Such that—my intent there, I believe at the time, was that in the favored nations clause, that if we licensed another company at a more favorable royalty rate, we would also give that privilege to the Townsend Company. [fol. 531] Mr. Haggerty: I have to sort through this pile of stuff occasionally, your Honor.

My brother was so meticulous in having its arranged properly, that I don't want to disturb the sequence.

Q. (By Mr. Haggerty) I hand you Government's Exhibits 34 and 34-A. They have both been introduced into evidence and they are identical, with the exception that one has the stationery of the Huck Manufacturing and has the fact that Mr. Armour's name is encircled in red, and it has a stamp date on it, April 24, '56. They are duplicates, perhaps you better read, for convenience, Exhibit 34-A.

Refresh your recollection?

A. Yes.

Q. Now, as to the contents of this letter, which is dated April 20th, 1956, which would be in the period—the two-year period as to price maintenance from the agreement of September 14, 1956—or 1954, the two years would expire in September, September 14, 1956.

Now, this letter is dated April 20th, '56, and it is a letter to Mr. Paul Horst, (spelling) H-o-r-s-t, Assistant to the President, the Townsend Company, New Brighton, Pennsylvania.

(Reading):

> "I wish to thank you for the many courtesies extended during our very pleasant visit to New Brighton [fol. 532] earlier this week. Your hospitality was certainly appreciated and we certainly appreciate the opportunity also of working with your organization more socially in some of our common problems.
>
> "There is one point just brought to my attention concerning the pricing of our aircraft Huckbolts which I think you might wish to look into. When we offer the aircraft Huckbolt for sale to the Navy Department, Bureau of Aeronautics, central purchas-

ing in Philadelphia, we have a packaging charge to package the parts in accordance with Government specifications. This is overseas type packing and is fairly detailed. You may have been or may be asked to do the same and our prices are 60¢ per box for the 3/16", 80¢ per box for the 1/4", $1.00 per box for the 5/16", and $1.20 per box for the 3/8".

"For example, if they want the 1/4" aircraft Huckbolt, 100 pieces per box, we charge $8.00 per thousand extra; and if they want 25 pieces per box, we charge $32.00 per thousand extra.

"Again many thanks for your hospitality.

[fol. 533] And it is signed, "Huck Manufacturing Company.

By yourself, Vice President in charge of Sales.

Now, this letter was written for the purpose of having Townsend comply with the provisions of the written contract of September 14th, 1954, isn't that true?

A. That is correct.

Q. Yes. And you had a perfect legal right predicated on the contract so to do, did you not?

A. As far as I know, yes.

Q. Yes. Now again the Government has introduced into evidence Plaintiff's Exhibit 35, and attached thereto is a price list, but just referring to the yellow sheet of that exhibit, would you refresh your recollection?

This letter is dated May the 9th, 1956. It is within the two year period as to price maintenance, is it not?

A. Yes.

Q. And without going through, reading this letter, it refers to prices,

> "We would like to ask that the prices be adhered to in accordance with our existing agreement."

The agreement that you were referring to was the written agreement of September 14th, 1954, isn't that true?

A. Yes.

[fol. 534] Q. I hand you the Government's Exhibit 36, which has to do with one Mr. Hardy Luke, purchasing agent at Marietta, Georgia, for Lockheed, and ask you to refresh your recollection.

It does refresh your recollection?

A. Yes, it does.

Q. Now, I will ask you is this reference to the occasion or occasions when Townsend shipped the Lockheed Marietta by air express, or air cargo, lockbolts in order to make the delivery?

A. I believe that that memoranda refers to packaging.

Q. Packaging of lockbolts.

And this letter, the Exhibit 36, is dated May 11, '56, it is from yourself—it is departmental correspondence—to Armour, Benkert, DeLoach, Albritton, Pelletier, Braund and file.

And you stated that you

(Reading):

> "contacted Paul Horst on the matter of packaging and he has indicated to me that he will make it clearly understood to the Cherry Rivet Division immediately that they are to offer packaging to aircraft companies just exactly the way we offer packaging as expressed in the copy of your teletype to Mr. Luke on the first page of the subject memorandum. He indicated that [fol. 535] it could be possible that some deviation from this expressed policy might have been made by the Cherry Rivet Division of Townsend in lieu of any better information but that the latest up-to-date information on packaging has been sent to Townsend and that we should hear no further from difficulties of this type."

Now, there was something to do with packaging, is that it, that Townsend was grouping or splitting, or what was the difficulty on the packaging that prompted you writing this correspondence?

A. I believe that Townsend was offering packaging more favorable condition to the Lockheed company than the Huck Company was doing.

Q. And would that effect the price, too, to the Lockheed people?

A. No.

Q. Well, what would be the advantage of it to Townsend?

A. The advantage of the matter to Townsend would be it would put them in a more favorable position as a supplier.

Q. And you took the matter up with Mr. Horst so to remove that advantage, is that right?

A. Yes.

Q. In other words, that Huck would be on a par with Townsend?

[fol. 536] A. Yes.

Q. And that was the purpose of your letter?

A. Yes.

Q. And you think you were acting within your legal rights in the scope of the agreement of September 14, 1954, in writing this?

A. I would have to refer to that agreement before I could answer that question.

Q. Yes?

A. May I refer to the agreement?

Q. You want to read the agreement?

A. One clause.

The Court: 17.

Mr. Haggerty: 17, your Honor.

You will appreciate, we haven't much room to maneuver here. Did I happen to return it to you?

Mr. Lipson: No, you didn't, but Mr. Haggerty may use our copy of 17 if he would like to.

Mr. Haggerty: All right. Let the record show I am using a photostatic copy of 17. I think you can read this, witness.

A. Thank you.

Q. (By Mr. Haggerty) Do you find any authority within the contract for you calling this matter to Townsend's attention?

A. No.

[fol. 537] Q. Would you say, then, that in that instance probably inadvertently you exceeded your authority?

A. I don't know if it were inadvertently or intentionally.

Q. Or did you just take a chance to put Townsend in its place?

A. The only motivation that I recall in that matter had to do with preserving our company's competitive position insofar as possible.

Q. I see. And you made the effort to see that Townsend observed the rule that you laid down and they complied with it, didn't they?

A. Yes.

Q. Now, the Government's Exhibit 38, a copy of a letter that you wrote, dated July 3, 1956, to

(Reading):

"Mr. Paul Horst, President
"Townsend Company
"New Brighton, Pennsylvania

"I understand from our Atlanta representative that your Cherry Division offers prepaid premium shipments when they are behind schedule which is a little stiff competition and gives them a competitive edge which we do not enjoy.

"I wondered if you would look into this in view of our price equalization agreement."

[fol. 538] Now this is July 3, 1956, within the two year period following September the 14th, 1954.

Now, I think you have explained that by a prepaid premium shipment you meant where the sender, in this case Townsend, would use the facilities of an airplane, a premium shipment, to ship their lockbolts when they were behind in schedule on delivery, is that right?

A. Yes.

Q. Huck did not do that?

A. Apparently not. I don't recall that specifically.

Q. Yes. And you were writing to Mr. Horst, calling this to his attention, and asked him if he would look into this in view "of our price equalization agreement," isn't that true?

A. Yes.

Q. In other words, by using a prepaid shipment, the purchaser was actually getting the lockbolts at a cheaper price than they could get from Huck?

A. Yes.

Q. Again July 3, 1956, seems to have been a busy day for you to correspond with Mr. Horst as evidenced by Government's Exhibit 40.

You wrote a letter to Mr. Horst and mentioned a Buffalo transaction where

(Reading):

"Our Buffalo representative reports that you have [fol. 539] permitted grouping of non-standard commercial Huckbolts (about grip 23 or 24) with short standard grips. This report comes from a Mr. Stutz, Shop Superintendent of Niagara Blower Company.

"We only permit grouping of the part numbers shown in the price list and we would like to ask that you do likewise."

Now this was in the two year period and you simply asked Mr. Horst—you told him that you would like him to follow the policy of Townsend, isn't that right?

A. No.

Q. You say, (reading):

"We only permit grouping of the part numbers shown in the price list and we would like to ask that you do likewise."

A. Yes.

Q. So, didn't you ask Mr. Horst to carry on this particular phase of the business the same as Huck did?

A. Yes. I believe your question referred to Townsend rather than Huck.

Q. I beg your pardon.

A. I was encouraging Mr. Horst to follow the policies of Huck at that time.

Mr. Haggerty: I am afraid, Mr. Lipson, after you [fol. 540] so carefully stacked these, that I am going to mess them up for you, but I think they can be reshuffled.

Mr. Lipson: That is part of the Government's burden in this case, I am afraid.

Mr. Haggerty: Well, let's not burden the Government too much.

Q. (By Mr. Haggerty) Now, as evidenced by Government's Exhibit 42, you wrote a letter to Mr. H. E. Chilcoat, Vice President and General Sales Manager of the Cherry Rivet Division, The Townsend Company in Santa Ana,

California, dated December 27, 1955, and this was in reference to the Standard Parts and Equipment Company stocking a supply of lockbolts and holding out an initially lower price to the customer than could be met by Huck, but upon delivery, the customer paid the same price because they had to pay the freight, isn't that the situation?

A. Yes, as I recall it.

Q. Yes. Now, you wrote this letter to Chilcoat following your visit to investigate this problem at the seat of the trouble which was Fort Worth, Texas, and then you visited Mr. Chilcoat in Santa Ana, did you?

A. I don't recall traveling to Fort Worth on the matter, was that your question?

Q. Yes. You did not go to Fort Worth?

A. I don't recall doing so.

[fol. 541] Q. You went directly to Santa Ana and conferred with Mr. Chilcoat directly?

A. I don't know that I traveled to Santa Ana for that purpose; when I was there, I did see Mr. Chilcoat, yes.

Q. All right. We will say that you were on the West Coast——

A. (Interposing) I think so, yes.

Q. (Continuing)—or visiting the West Coast and that was one of the things you did?

A. That is.

Q. That is, conferred with Mr. Chilcoat over the Standard Parts and Equipment Company situation?

A. Most accurate, yes.

Q. And you in this letter said Mr. Unfried's memorandum to me—and who is Mr. Unfried, is he a representative?

A. Yes.

Q. Is it pronounced Unfried or Unfreed?

A. It's pronounced "freed". We used to pronounce it "fried" however, common usage.

Q. Well, that's a hot place, Fort Worth.

(Reading):

> "Cherry is quoting a lower price for the lockbolts than Huck on all quotation. However, the freight point listed on both are F.O.B. each plant. The freight is more from California than it is from

Detroit, which makes the delivered price about the same, but the buyers can justify giving the orders to [fol. 542] Cherry, at a lower cost, accordingly to the quotation. This one point is being pressed by SP & E to all buyers, as a reason to give them the orders along with the local stock deliveries."

You asked him to look—for an early opportunity to look into the above mentioned situation,

(Reading):

"—as it appears to be serious to us, and one which should be corrected, if need be."

And again he extended courtesies and you thanked him.

Now, this letter is dated December 26, 1955, which is within the two year period from September 14, 1954, as to the price arrangement, isn't that true?

A. Yes.

Q. The maintenance of prices?

A. Yes.

Q. Now, let me ask you: There have been introduced in evidence exhibits and there has been some testimony from you as reference to a dispute that arose between Townsend and Huck in reference to the manner in which freight charges were to be made, isn't that true?

A. I don't classify that as a dispute, sir, I classify it as a negotiation.

Q. Well, I will ask you this: You resigned from Huck [fol. 543] on what date?

A. I don't recall the date.

Q. Was it in the month of July of the year 1956?

A. Yes.

Q. And following your resignation, you told us you stayed on for a period of four or six weeks to complete some work that you were engaged in?

A. Yes.

Q. Subsequent to your resignation?

A. Yes.

Q. Now, during the time that you were at Huck, do you know if this disagreement—we won't call it an argument—but this disagreement over how freight charges were to be

made was settled during your tenure as vice president in charge of sales.

Was that question ever settled?

A. The question isn't even clear to me. May I hear it back?

Q. All right. During your tenure as vice president in charge of sales, was the disagreement between Huck and Townsend ever settled in reference to how freight charges were to be made?

A. No.

Q. I hand you Government's Exhibit 48, to refresh your recollection.

The Court: What is this number?

[fol. 544] Mr. Haggerty: 48, your Honor.

Q. (By Mr. Haggerty) Having read it, does it refresh your recollection?

A. Yes.

Q. Now, this letter is dated October 15, 1954, one month and one day after the written agreement was excuted by and between Huck and Townsend, and this is departmental correspondence from you to A. W. Armour, copies to Benkert, Pelletier, Sterritt, and file.

(Reading):

"One major point was brought up during our marketing conference with Townsend October 14."

Now, you did have—subsequent to September 14, 1954, you did have a conference with Townsend which you participated in on October 14th, did you not?

A. Apparently.

Q. Yes. Have you forgotten that?

A. Yes.

Q. And who was present, does it refresh your recollection, having established the fact that there was a conference a month and a day after the agreement was executed as to who was present?

A. I recall specifically now one marketing meeting that was held at the Homestead in Virginia, is that the one that you are referring to?

[fol. 545] Q. All right. At the Homestead. I don't know, I wasn't there.

A. I don't either.

Q. I am asking you.

A. The meeting you are referring to is—I recall one marketing meeting, and that marketing meeting was held at the Homestead in Virginia.

Would you like me to tell about that meeting, who was there.

Q. I will ask—I will proceed from there. We have established there was a meeting. And you represented, did you not, Huck?

A. At the meeting that I am referring to?

Q. Yes.

A. Yes.

Q. And did anyone accompany you?

A. Yes.

Q. From Huck? Who?

A. Mr. George Q. Mathews.

Q. And what was his capacity with Huck at that time?

A. Sales manager.

Q. And was that all that represented Huck?

A. Yes.

Q. And, as a matter of fact, this meeting was actually a sales meeting, a sales promotion meeting of Townsend, wasn't it?

A. The meeting at the Homestead, yes, was.

[fol. 546] Q. And you were invited to that meeting?

A. Yes.

Q. And you spoke at that meeting?

A. Yes.

Q. You gave an oration?

A. Yes.

Q. Now, you stated in this letter, then, of October 15, 1954, (Reading):

> "During our discussion, the point was made that our license did not include the stump."

Now, what do you mean by "stump?" Lockbolt stump?

A. Yes.

Q. (Reading):

> "—and that if the stump were to be included, a separate license would have to be written based upon know-how."

Now, as a matter of fact, was there a patent on the lock-bolt stump?

A. No.

Q. No. In other words, as far as a patented article, Huck had nothing to license to Townsend or anyone else, did they?

A. No.

Q. All they did have——

A. (Interposing) Excuse me. Excuse me. Yes, they did not have anything to license.

Q. They did have, however,—they did have, however, [fol. 547] the know-how as to the ability to make them?

A. That is, Huck did.

Q. Yes.

A. Yes.

Q. And all they could do as far as that was concerned was to license Townsend and give Townsend their know-how?

A. Yes.

Q. Now, you say:

(Reading):

> "I would like to suggest that we proceed immediately with this license and I do believe that Townsend would be willing to have the second license included so that they could have a rounded line such as ours, making the same parts and insuring our complete cooperation for the entire line."

That is what you mentioned in this letter and that is what you desired, isn't it?

A. Yes.

Q. That Townsend would have a well rounded line such as Huck?

A. Yes.

Q. A complete line. Now, is it within your knowledge that this license was ever granted by Huck to Townsend, the know-how?

A. Yes.

Q. And is it within your knowledge that there was a [fol. 548] royalty or was not a royalty arrangement?

A. I would have to refresh my memory before I could answer that.

Q. But, you do know that there was a license?

A. Yes.

Q. As a matter of fact, to refresh your recollection, do you recall when you were acting as a "reader" for my friend, that you read part of that agreement yesterday?

A. I do, yes.

Q. Yes. But you don't remember whether or not there was a royalty?

A. I would have to read it over again.

Q. All right. Now, referring to the Government Exhibit 50, which is dated February the 15th, 1955, and this is from Mr. M. E. Welch (spelling) W-e-l-c-h, Jr., on departmental correspondence, and it is addressed to Armour, Benkert, Bernard, Looker, Mathews, Pelletier, Cianfarani, Serra, (spelling) S-e-r-r-a, Welch, Westrick, Higgins, Smoot, Van Hecke, Rowse, Vercellone, Dobbe, and file.

Now, this has to do with a price increase and the first sheet is from Mr. Welch to those persons whom I have just named.

And the second, I believe, is a specimen letter that you have drawn up to send to customers to announce a price increase, am I correct?

A. Yes, you are.

[fol. 549] Q. Now, in reference to price increases, did you have anything to do with price increases?

A. Yes.

Q. Was there a committee on price increases?

A. You are speaking of this two year period?

Q. I am speaking of the two year period, yes, sir.

A. Yes, there was.

Q. And who was on that committee?

A. Mr. Armour, Mr. Benkert, and Mr. Pelletier.

Q. Yes.

A. And I would assume that I was also a member of that, although I am not real certain.

Q. And will you kindly give Mr. Pelletier's capacity with the Huck?

A. He was in charge of cost accounting.

Q. And was it usually Mr. Pelletier's recommendations that were followed by the committee?

A. I am not certain.

Q. Well, if Mr. Pelletier demonstrated that certain articles—lockbolts were being manufactured by Huck at a loss and he made a recommendation to raise the price sufficiently so there would be no loss and a nominal profit, would the committee follow that recommendation?

A. As I recall it, the more usual practice was, having received a recommendation from Mr. Pelletier, that a great [fol. 550] deal of discussion usually ensued about how much the prices were going to be raised. My usual position was to keep the prices down to preserve our company's competitive position, and Mr. Pelletier's usual position was to increase them to show a more adequate profit.

The result was often somewhere in between. The result was sometimes according to Mr. Pelletier's requests, and the result was sometimes according to my own position.

Q. Well, you were the man in charge of sales, and it was your desire and wish to sell as many lockbolts as possible?

A. Yes.

Q. And you were cognizant of the fact that price had a lot to do with sales?

A. Yes.

Q. Where Mr. Pelletier was looking from a different angle than you were approaching it, is that true?

A. Yes.

Q. So somewhere between your two opinions the price was arrived at?

A. Yes.

Q. Now, in this letter that you—specimen letter that you got together, it went to all customers, did it not?

A. I would assume so.

Q. And it is re: AL—ALS price increase. Now, it seems to me that Huck is as bad as the Federal Government with [fol. 551] these letters of the alphabet.

What is "AL"?

A. Aircraft Lockbolt.

Q. What is "ALS"?

A. Aircraft Lockbolt Stump.

Q. Now, you wrote a very sweet letter announcing the raising in prices:

(Reading):

"Because of your patronage and generous use of our Huckbolt and Huckbolt Stumps during the past four years, we have been able to offset increased labor, material and operating expenses by increased production of the parts and consequent production efficiencies and economies."

Now, that is true, isn't it?

A. Yes.

Q. (Reading):

"We do find it necessary, however, at this time to increase the price of our Aircraft Huckbolt Pins and Aircraft Huckbolt Stumps nine per cent to cover cost increases not otherwise amortized during the past years."

Now, what were your cost increases; were labor costs increased?

A. Generally, yes.

Q. Was the cost of materials increased?

A. Yes.

[fol. 552] Q. And, in your opinion, was his a bona fide justified raise of nine per cent?

A. This is the Aircraft Lockbolt?

Q. Yes, sir.

A. And Lockbolt Stump?

Q. Yes, sir.

A. Yes.

Q. So what you have stated here was the truth?

A. As far as I know, or knew then, yes.

Q. Yes. And then you go on to say that price change will be placed.

(Reading):

"—into effect February 15, 1955, and a new printed price list will be sent to you under separate cover in the near future. Please note that the price for the Huckbolt Collars is unchanged.

"Thanking you for your many courtesies we remain,
"Huck Manufacturing Company, "Robert Looker,
"Vice President in Charge of Sales."

Now, this increase in price, according to your specimen letter, as of February 10th, and the notice, the Exhibit 50, is February 15, 1955; this price increase was made within two years subsequent to September 14th, 1954, isn't that [fol. 553] true?

A. Yes.

Q. Now, again Exhibit 51 is dated March 25, '55, and refers to different specimens or different types of articles made by Huck, and it is from Mr. Welch, to Armour, Benkert, and so forth, in reference to a price increase of other articles, and attached to it, dated March 30 of 55, is another specimen of a letter to be sent to customers, announcing an increase.

You may look at the entire thing, if you desire. Have you refreshed your recollection?

A. It does, yes.

Q. All right, sir. Now, this was a price increase, and you drafted a specimen letter, March 30 of '55 on other products of Huck; is that true? That is, the Lockbolt Raises of nine per cent and the increase referred to in Exhibit 50 had to do with steel lockbolts; isn't that true?

A. I believe that that had to do with aircraft lockbolts.

Q. Aircraft lockbolts?

A. Yes.

Q. Now, you're referring now in your specimen letter to commercial lockbolts; is that true?

A. Yes.

Q. And you say in this letter, this specimen letter, (Reading):

[fol. 554] "—in the past four years our costs have increased 26½% for labor——"

That was true?

A. I assume so.

Q. You were informed that was true by someone?

A. Evidently.

Q. Possibly Mr. Pelletier?

A. Possibly.
Q. He being in charge of—cost accountant?
A. Yes.
Q. (Reading):

"31% for aluminum, and 30% for steel, so that we now find it necessary to establish a new price structure for the Commercial Huckbolt."

Now, of course, you knew that was true?
A. Yes.
Q. And as far as you knew, this raise in the price of the Commercial Huckbolt was justified in order for the company to stay in business and make a nominal profit?
A. Yes, that's correct.
Q. I hand you Government's Exhibit 59, and ask you to read it and refresh your recollection.
You have read it, sir?
A. Yes.
Q. Now, in Government's Exhibit 59, dated May 25, 1956, and it is from Robert Looker to Armour, Benkert, Sterritt, Brilmyer and file.
[fol. 555] And the subject is Pheoll Lockbolt Type Fasteners, and your letter is to the effect:
(Reading):

"This memoranda will confirm some of the points discussed between John Sterritt and myself during our meeting today on the subject of the Pheoll Lockbolts."

Had Pheoll come out into the market with a lockbolt?
A. They had offered a lockbolt for sale to the Boeing Airplane Company in Seattle, Washington.
Q. All right. (Reading):

"Based on the information received that Pheoll presented a lockbolt to Boeing for evaluation Wednesday, May 23, we believe that the following should be considered at this time.

"It is extremely doubtful that Pheoll is aware of the methods claims allowances by the Board of Patent Examiners——"

Now, what was this methods claims on, the method of manufacturing a lockbolt or something else?

A. Something else.
Q. And what was that something else?
A. A method of installing the lockbolt fastener.
Q. All right. Is that confined to lockbolts or are lockbolt stumps included in it or just lockbolts themselves?
[fol. 556] A. Just lockbolts.
Q. Yes. (Reading):

> "—and that it is recommended that these claims be called to their attention at an early meeting (which I understand will be set up on or about June 11).
> "Both John and I believe that we should give strong consideration to licensing Pheoll under the claims of our Methods Patent."

Well, now, let me ask you had Townsend on May 25, 1956, an exclusive license or any license to this Methods Patent?

A. No.
Q. Was it part and parcel of the license agreement between Huck and Townsend?
A. The application may have been.
Q. Then you say that (reading):

> "Both John and I believe that we should give strong consideration to licensing Pheoll under the claims of our Methods Patent."

Was Huck free having a two year exclusive with Townsend?
Was Huck free to license Pheoll on May 25, 1956?

A. No.
Q. Then why did you express it that strong consideration should be given to doing something that Huck couldn't do?
A. Presumably they would be free a few months later [fol. 557] to issue such a patent license.
Q. That is, at the expiration of the two year period?
A. That is correct.

Q. You were speaking in the future, then, and not as of the present?

A. Yes.

Q. Now, I hand you the Government's Exhibit 60, and probably you don't need any refreshment on this one.

A. No, I do not.

Q. Yes. Now, the Government's Exhibit 60 is dated April 13, 1956, and it is addressed:

(Reading):

"Dear Mr. Armour:

"As you will recall during our meeting of June 26 in Mr. Stern's office, we discussed certain phases of the manufacturing company I am starting. The plans for the business are now being formulated, and accordingly I ask to be given a license to manufacture and sell lockbolt devices other than those lockbolt devices manufactured and sold by Huck as standard parts under Patents 2,114,493, 2,527,307—1,531,048 and 2,531,049 and under pending patents relating to shear lockbolt devices, to be made effective as soon as other commitments allow.

"We will not be in a position to start manufacture [fol. 558] for some months, but your early consideration and decision will allow proper planning to be made at these early stages, and will be greatly appreciated. May I discuss these matters with you during your next trip to Detroit?

"Very sincerely, Robert Looker."

Is that the first request that you made of Huck to Mr. Armour, that Huck grant you a license to manufacture some of his articles under some of its patents?

A. Yes.

Q. Now, what do you mean (reading):

"— I ask to be given a license to manufacture and sell lockbolt devices other than those lockbolt devices manufactured and sold by Huck as standard parts under——"

the patent numbers?

Do you mean by that that these would be non-standard lockbolts that you desired to manufacture?

A. Yes.

Q. Did you also desire to manufacture lockbolt collars?

A. Yes.

Q. Now, let me ask you, this company that you have purchased with others was a company that manufactured some [fol. 559] airplane hardware; isn't that right?

A. That is correct.

Q. And the airplane hardware that they manufactured was of the type that was used to hold down cargoes in carrier planes, commercial planes, freight planes; isn't that it?

A. Yes.

Q. Yes. They had never manufactured a lockbolt to your knowledge, the Brown Line Company?

A. Yes, they had never manufactured a lockbolt.

Q. They also had never manufactured any of the products that were manufactured by Huck?

A. Yes.

Q. You mean, I'm correct in that statement?

A. Yes.

Q. Now, what as to their physical equipment? What did they have in the way of machinery at the time of your request to manufacture lockbolts?

A. They had no such machinery.

Q. Well, you stated:

(Reading):

> "We will not be in a position to start manufacture for some months, but your early consideration and decision will allow proper planning to be made at these early stages, and will be greatly appreciated."

So at that time the Brown-Line Company, who had been [fol. 560] engaged in the manufacture of hardware for airplanes that was far divorced from the products manufactured by Huck, you wanted Huck to give you a license to manufacture lockbolts?

A. That is correct.

Q. That is of the—all lockbolts or just non-standard lockbolts?

A. Non-standard lockbolts.

Q. Yes. And to manufacture collars; is that true?

A. Non-standard.

Q. Non-standard collars?

A. Yes.

Q. Now, then, as a matter of fact, one collar—one collar of a lockbolt will serve to fit quite a number—quite a number of different size lockbolts, will it not?

A. Yes, different lengths, different length lockbolts.

Q. Different length lockbolts. Now, as an example, to begin with, as to pins, there are two qualities, aircraft and commercial?

A. Yes.

Q. The aircraft had two head styles; isn't that right?

A. Yes.

Q. The commercial have three head styles?

A. Yes.

Q. The grips, as to aircraft approximately are 32?

A. Yes.

[fol. 561] Q. In commercial, they're about 50?

A. (No response.)

Q. You're not so familiar with commercial?

A. I don't think there are that many.

Q. You don't think there are?

A. No.

Q. Well, if that would be true, there were two head styles and there are 32 grips, the same collar will fit 64 different lockbolts, won't it?

A. Yes.

The Court: Let's break here.

(Whereupon, a short recess was taken.)

[fol. 562] AFTER RECESS

ROBERT LOOKER, a witness called on behalf of the Government, having been previously duly sworn, resumed the witness stand, and testified further upon his oath, as follows:

Cross-examination. (Continued)

By Mr. Haggerty:

Q. We were just discussing, sir, in reference to collars, that there are 64 possible numbers, 60-4 sizes, and assortments that can be served by a collar.

Now, as to materials, there is one in steel, and three in aluminum, so that would be four times 64, or one collar would fit 256 different lockbolts; is that true?

A. No.

Q. No? Why not?

A. There are two aluminum collars, one used with the steel lockbolt and one used with the aluminum lockbolt.

Therefore, it's a separate division.

Q. Well, aren't there three different—you mean, that's different—steel is used with steel and aluminum is used with aluminum?

A. Sometimes.

Q. Sometimes? But it can be used interchangeably, can't it?

[fol. 563] A. No.

Q. No? You say positively no?

A. Yes.

Q. Now, as far as commercial lockbolts are concerned, if they have 50 different length grips and three head styles, if you multiply the 3 by 50, there's a hundred and fifty, and as material, the commercial are made in aluminum as well as steel; isn't that true?

A. Yes.

Q. And there's two different—two different types of aluminum; isn't that true?

A. For commercial?

Q. Yes.

A. Yes.

Q. And only one of steel?

A. Yes.

Q. So that would be three times 150, or a collar would fit, as far as commercial are concerned, 450 different sizes and shapes of lockbolts?

A. That's accurate, yes.

Q. Yes. Pretty good mathematicians, aren't we?

The Court: I think you stole that stuff.

Mr. Haggerty: Well, if you want a confession, your Honor, I'll confess that I am not a scientist and I am not a mathematician.

[fol. 564] The Court: That's all right.

Q. (By Mr. Haggerty, continuing) Now, prior to resigning from Huck Manufacturing Company as a vice president in charge of sales, prior to your resigning did you have any conferences or discussions with Mr. Armour or Mr. Benkert in reference to procuring a license to manufacture Huckbolts, prior to your resignation?

A. No.

Q. Now, referring——

A. (Interposing) Exeuse me, sir. May I qualify my last answer, please?

Q. Yes.

A. The sequence of events relating to my resignation were that Mr. Miner and I indicated the plans of my resignation with Mr. Benkert the evening prior to my having submitted my letter of resignation to the company.

During that meeting in Mr. Benkert's office, I believe we did mention the fact of our intentions or establishment of a separate business and very probably the fact that that separate business would request a patent license from the Huck Company.

Thank you.

Q. Now, in reference to the Exhibit 60, Government's Exhibit 61, rather, you wrote a letter from Brown-Line Corporation on October the 23rd, 1959, and you say:

[fol. 565] (Reading):

"Dear John:"

This is a Dear John Letter.

(Reading)

"With reference to our letter of October 13, 1959, it has come to our attention that the Department of Justice is conducting an investigation to determine the extent of monopoly Huck may have over the lockbolt industry.

"If this contention is shown to exist, we would prefer not to be a party to what might later be shown to be the augmentation of an illegal monopoly.

"We therefore feel only licensed to offer our invention on a non-exclusive basis, and it is requested that paragraph two be changed accordingly.

"As you will recall, on July 13, 1956, I wrote a letter to Mr. A. W. Armour requesting a lockbolt patent license, which request was denied 'because of certain complications which we have not been able to surmount.'

"We again request that we be granted a patent license under Patents——"

and they are numbered (reading):

"—to manufacture and sell lockbolts, being well equipped for their design, manufacture, and sale. [fol. 566] "Looking forward to hearing from you, I remain."

So you, on October 23, 1959, in your Dear John letter sent to Mr. Sterritt, (reading):

"—it has come to our attention that the Department of Justice is conducting an investigation to determine the extent of monopoly Huck may have over the lockbolt industry."

Where, as a matter of fact, sir, you were already, were you not, and had been in touch with the Government a year prior and had given to the Government a complaint

which instituted the investigation, the Grand Jury and the indictment that is before this Court and Jury, had you not?

A. I gave such a complaint to the Government, yes.

Q. Yes. Then why did you say that it had come to your attention, when you knew well that you were the person that initiated the complaint and had investigated—initiated the investigation by the Department?

A. Prior to the letter of October 23, 1959, it was not within my knowledge that the Department of Justice had acted upon the complaint which we had made, nor had they started an investigation.

The knowledge that we had that an investigation was being conducted by the Department of Justice, possibly [fol. 567] as a result of the complaint which we submitted to the Government, was just shortly prior or just prior to this letter, so it was a new bit of information for us.

Q. Yes. Now, as a matter of fact, on October 23rd, 1959, by that time, and on the 17th of April, 1959, you had mailed an affidavit to the Department of Justice or, rather, your attorney, William H. Pavitt, Jr., had mailed a letter to the Department of Justice, enclosing your affidavit, and it was addressed to Charles L. Beckler, Anti-Trust Division, U.S. Department of Justice, Washington 25, D.C.; isn't that true?

A. Yes, it is.

Q. That was all prior to the Dear John letter?

A. Apparently, yes.

Q. So you didn't have to have anything called to your attention?

There was information actually furnished by you that was in the Department of Justice?

A. I didn't so indicate, either.

Q. Well, aren't we splitting hairs, when you say "—it has come to our attention that the Department of Justice is conducting an investigation," when you knew full well from the time you made the complaint, had the first conversation with an Assistant Attorney General of that Department and had filed your complaint and filed an affidavit that that information was before the Department? [fol. 568] A. I knew that, yes.

Q. Now, supplementing your letter of October 23, 1959,

on December 3rd, '59, you wrote a letter to John Sterritt, another Dear John letter, and you asked him to correct numbers of patents that you had referred to in your letter of October 23rd, '59, and you say, among other things:

(Reading):

"That's what I get for using my faulty memory in not looking up the numbers."

A. Yes.

Q. Then do you consider that you have a faulty memory as of this time?

A. It sometimes is, yes.

Q. Yes. And do you consider that you had a faulty memory when you gave information to the Department of Justice?

A. No.

Q. Then you draw the line that there are times when your memory is infallible, isn't that correct?

A. I do not.

Q. I see. Now, despite the Dear John letter of October 23rd, 1959, and your apprehension of being dirtied up by a Government investigation and your desire not to be involved in it in any way, on November the 9th, 1959, you write another Dear John letter, addressed to John Sterritt, and in that letter you give him (Reading):

"Many thanks for your letter of November 4, 1959. [fol. 569] "The matter of requested patent license should perhaps be given a greater definition of intent on our part for the consideration of the Huck Company. If such a license is granted, we would only manufacture lockbolt collars at this time on screw machines we now own——"

Now, stop there. At the time that you wrote that letter, November the 4th, '59, isn't it true that the only machine equipment that you had in Brown-Line that would permit you to make on screw machines collars, lockbolt collars?

A. If I understand your question, which I'm not certain I do——

Q. (Interposing) So you well understand it, as of November the 9th, 1959, isn't it a fact that the machinery in the

Brown-Line Corporation plant as of that date, was only equipped to make collars?

A. That is correct.

Q. And, further, you say (Reading):

"—we would only manufacture lockbolt collars at this time on screw machines we now own, and enter lockbolt pin manufacture as machinery is procured for that purpose. The license we request is not by us an admission of validity of the patents——"

[fol. 570] In other words, you're asking for a license but you will not admit the validity of the patents that were issued to Huck; is that correct?

A. That is correct.

Q. Yes. Under which the license would be issued, you didn't sincerely believe that you had much of a chance to get a license unless you would admit the validity of the Huck patents, did you?

A. That was my hope, yes.

Q. You knew John Sterritt pretty well, didn't you?

A. Yes.

Q. You know he's a very careful patent lawyer?

A. Yes.

Q. You knew Watson Armour, did you not?

A. Yes.

Q. Knew him quite well?

A. Yes.

Q. And you knew that he would never consent to issue a license unless the recipient of the license, the licensee, would admit the validity of patents?

A. I didn't know that, no.

Q. Didn't you—didn't that impress you at all?

A. That perhaps was a concern of mine, but at the time not a primary concern.

Q. Yes. (Reading):

"—and to sell such parts in open non-restrictive com-[fol. 571] petition, for which right we will agree to pay the Huck Company a reasonable royalty. Our request for such a license has been pending with the Huck Company for about three and a half years, and a reply will be appreciated."

Now, why, if, on October the 23rd, 1959, you're apprehensive of doing business with Huck, because of investigation, would you, on November the 9th, 1959, make an offer to do business with Huck?

A. We were not apprehensive on doing business with Huck, as such. We were apprehensive on taking a patent license which had features in it which might be considered to be as contributing to the establishment of an illegal patent monopoly. The consideration that we had at that time was that we would like to be a patent licensee, but not under such terms where we would be considered party to the establishment or the augmentation of an illegal patent monopoly.

Q. Now, when you wrote your letter of October 23rd, '59, and your letter of November the 9th, 1959, requesting—first of all, in your first letter of October 23rd, you say "we would prefer not to be a party"—in other words, you're withdrawing a prior offer made to then do business, but on November the 9th, 1959, several days later, you [fol. 572] offered to do business with Huck.

Had you informed anyone at Huck at that time, either October 23rd or November the 9th, when you offered to do business with them, that you had on October the 27th, 1958, made a complaint about Huck to the Anti-Trust Division of the Department of Justice?

A. I indicated to Huck at a previous time that it was my intention to do so.

Q. But had you told them that you had done so?

A. I had not.

Q. Now, on March the 2nd, 1960, did you know whether or not the Department of Justice, Anti-Trust Division, was making an investigation of the complaint that you had filed October 27th, 1958?

A. On March the——

Q. (Interposing) 2nd, 1960?

A. Was that—may I ask a question, sir?

Q. Go ahead.

A. Was the October Dear John letter dated 1960 also?

Q. No, sir. I'll give you those letter dates again.

The first Dear John letter—it's like we're trying a divorce case—was October 23rd, 1959.

The second one was November the 9th, 1959. The letter

I'm referring to is the Government's Exhibit 65, and it is dated March the 2nd, 1960.

[fol. 573] Did you know, then, by March 2nd, 1960, that the Federal Government was investigating the original complaint that had been filed by you on October the 27th, 1958?

A. Yes.

Q. Despite that fact, you pursued your request of October 23rd and November 9th. And we have a third letter, the Government's Exhibit 65, a Dear John letter, and you say: (Reading):

> "I wonder if you would be so kind as to reply to my letters of October 23, 1959, and November 9, 1959, on the subject of our request for a lockbolt license.
>
> "If a license is to be granted, we would like to get started, and if it is not to be granted, we want to know that too so that we might proceed with other plans. As it is, we do not know the intent of the Huck Company and are therefore unable to proceed with the good development of our company's business in face of the Huck Company's domination over the lockbolt industry."

Now, as a matter fact isn't it true, Mr. Looker, that you wrote this letter of March 2nd, 1960, at the suggestion of your counsel?

A. No.

Q. Isn't it a fact that you wrote it at the suggestion of [fol. 574] attorneys in the Anti-Trust Division?

A. No.

Q. You're positive of that?

A. I am positive.

Mr. Lipson: I object strongly to the imputations in that question. I think it is grossly improper.

Mr. Haggerty: I don't think it is.

The Court: It may stand.

Mr. Haggerty: I think it is perfectly proper.

Q. (By Mr. Haggerty, continuing) We shall come back to that at a later time, witness.

Now, the Government has shown you and introduced into evidence, as Government's Exhibit 66, a letter from

the Olympic Screw and Rivet Company of Downey, California, from Mr. Maness, the President of that Corporation, addressed to you. And after congratulating you on being Vice-President in charge of sales he mentions in this letter:

(Reading):

"Speaking of licenses, I would also like you to give some thought in considering us for a license on your lockbolt. I am sure we could do a good job for you."

This is dated December 27, 1954. Quite properly, on September 29, 1954, you wrote to Mr. Maness, President of the Olympic Screw and Rivet Corporation, you thanked him for his letter of September 27th, and fine compli-
[fol. 575] ments, and you tell him you intend to attend the Titanium Symposium in Cleveland.

(Reading):

"We can also discuss matters of a lockbolt license at that time but I am afraid that there is very little we can discuss of real value for we have just signed a lockbolt license with the Townsend Company.

"Looking forward to see you then, I remain,".

Now, as a matter of fact, at the time that Mr. Maness of the Olympic Screw & Rivet Corporation applied for a lockbolt license, Huck was not in a position to give him one, because it had a two year exclusive from September 14, '54, with the Townsend people; isn't that true?

A. That is true.

Mr. Haggerty: Has the Government the original of a letter, October 10th, 1958, addressed to Huck Manufacturing Company, attention of Mr. A. Watson Armour, president, consisting of three, four pages, and an attachment from Brown-Line Corporation, signed by R. Looker?

Mr. Lipson: Does it bear any identifying number?

Mr. Haggerty: No, sir, that's all I have of it.

Mr. Lipson: May I ask if this was obtained from the deposition?

Mr. Haggerty: It was. It was—it was obtained from
[fol. 576] the deposition.

Now, that's my best information.

Mr. Lipson: May I examine this before I give you an answer?

Mr. Haggerty: Surely. May I sit down as an aged veteran of the Court, your Honor, while he looks over a three-page letter?

The Court: Yes.

Mr. Haggerty: Thank you, your Honor.

Mr. Lipson: Your Honor, I can't speak with assurance whether or not we have this letter, and what the original is. This is a photocopy of a copy, and if, by the original, Mr. Haggerty the original copy of which this photocopy was made, I think Mr. Looker has that, if he refers to the original from which the copy from which this photocopy was made.

I don't believe we have that, but I—as I say, I cannot answer it with—with absolute assurance at this time. I would have to look.

Mr. Haggerty: I'll give you what the Government number is. It's J-1042.

Mr. Lipson: The identifying number would ease things considerably.

Mr. Haggerty: I have to thank Mr. Dickey for that. He's the identifier.

[fol. 577] May we then mark this for identification as an exhibit, with the understanding that the copy in the Government's possession will be turned over as a substitute?

Mr. Lipson: Your Honor, may I merely say that there were approximately three or four thousand documents originally noted, of which quite a number, I would say more than half, were returned to the parties.

Now, I would have to check our records to see if that was among the ones we retained or among the ones we returned.

If obviously, it was the ones we returned, we don't have it. But if it was originally retained, we still do have it and we will produce it.

The Court: I think counsel is astute enough to present it and see what happens.

(Whereupon, a four-page photostatic copy of a letter, dated October 10, 1958, was marked as Defendant's Exhibit E, for identification by the Reporter.)

Q. (By Mr. Haggerty, continuing) I'll have to ask you to tax your eyes, Mr. Looker. This is the best we can do. I'll ask you to examine the Defendant's Exhibit, for identification, E.

The Court: What is it, a letter? Is that what it is?

Mr. Haggerty: It is a letter, yes, your Honor.

[fol. 578] The Court: Dated?

A. October 10, 1958.

The Court: Thank you.

Q. (By Mr. Haggerty, continuing) You have read it?

A. I have.

Q. Now, witness, on October the 10th, 1958, you wrote a letter to Mr. A. Watson Armour; isn't that true?

A. Yes, it is.

Q. And in that letter you make a lot of statements in reference to design and patent; isn't that true?

A. Yes, it is.

Q. And that was following—was not—this letter followed an occasion when you had presented to Boeing a collar; isn't that true?

A. That is correct.

Q. And Boeing, because when the collar was put on a Huckbolt or lockbolt, were fearful that it violated and infringed the Huck patents, and so Boeing would not purchase your collars; isn't that true?

A. I can't speak for the motivations or actions of the Boeing Company.

Mr. Lipson: Your Honor, I object to this line of questioning on the ground that it has no relation at all to the charges in the indictment.

Mr. Haggerty: I use it for the purpose that is men-

[fol. 579] tioned in this letter, which, I think, is highly proper.

The Court: Proceed.

Mr. Haggerty: Here's a letter sent by Mr. Looker——

The Court: Proceed.

Q. (By Mr. Haggerty, continuing) Well, in any event, Boeing would not purchase your collars?

A. They cancelled an order they had previously given our company.

Q. Yes. You say (reading):

> "Our purpose in writing you at this time is to ask your written assurance that the above reported impression created among the Boeing personnel by your Mr. Mathews, is not the official view of your company, but rather was merely 'salesmen's talk' in an effort to push your products with this customer, and that there will be no further harassment or claim to our customers that we are not free to manufacture and sell the above-described collars."

And you were talking there about the lockbolt collars, weren't you?

A. I was talking the lockbolt collar of a specific design, shown as an enclosure to that letter, yes.

Q. Yes. (Reading):

> "In the absence of such assurance, we would be faced with determining what steps should be taken [fol. 580] by us to clarify the situation thus created. The only steps apparent at present are:
>
> "1. To await your suit against us for patent infringement;
>
> "2. To institute suit against you for declaratory relief and/or for damage under the Anti-Trust Laws; and
>
> "3. To discuss the entire blind rivet and lockbolt situation with the Department of Justice Anti-Trust Division with a view to convincing the latter of need for public action under the Anti-Trust Laws."

In other words, in this letter of October the 10th, 1958, addressed from yourself to Mr. Armour, you give him three alternatives, do you not?

A. Yes. I believe there are four.

Q. Well, you have got them numbered, one, two, three.

A. The previous alternative was to cease harassment.
Q. Yes.
A. So, therefore, this would be four.
Q. What you considered harassment?
A. Yes.
Q. (Reading):

"In this latter connection, it appears to us that there is a serious question whether, if you are ac-
[fol. 581] tually asserting your unexpired patents to prevent our supplying simple unpatented collars to users such as Boeing, under the circumstances above indicated, you are attempting to monopolize this line of commerce beyond that which is permitted under the patent laws of the United States.

"It is also our thought that certain other actions taken by your company in the past to preserve to itself and to its licensees this important segment of the fastener business might merit public action by the Anti-Trust Division of the Department of Justice.

"Your early advice will relieve us of the necessity of prematurely selecting one of these alternatives."

Did you receive a reply to that letter?

A. No.
Q. And despite your ultimatum and your threat of taking the matter up with the Department of Justice, you did not receive any reply?
A. If—if there was a reply, it came sometime later and I am not certain whether there was a reply or not. I do know that we waited about four weeks and then we made our complaint, as stipulated.
[fol. 582] Q. Yes. As a matter of fact, and it is true that in both, prior to writing this letter, you had conferred with your patent counsel?
A. That is correct.
Q. And part of the language therein contained is his language, isn't that true?
A. Yes.
Q. And you were trying to smoke Mr. Armour out; isn't that true?

A. No.

Q. In other words, you were more than trying to smoke him out, you were telling him what you were going to do?

A. We were making a plea for the harassment to cease.

Q. Yes, and if what you called harrassment did not cease, then you were going to follow one of two alternatives; you were going to file a suit for the declaratory judgment and ask for money damages or else, under the Anti-Trust Laws —or you were going to report it to the Anti-Trust Division of the Department of Justice?

A. That is correct. There was a third.

[fol. 583] Q. Yes. And the third—the third one, he could institute suit against you?

A. Yes.

Q. Yes. And you had made up your mind, if you didn't have this matter resolved to your satisfaction, you were going to make a report to the Department of Justice?

A. At that time——

Q. (Interposing) Anti-Trust.

A. At that time we hadn't decided what we would do.

Q. But you had discussed that and had thought along that line, had you not?

A. That was a possibility, yes.

Q. Because it's expressed in your letter as a possibility?

A. Yes.

Q. Now, following that letter, you say you waited about four weeks and received no reply?

A. Yes. It may have been six weeks.

Mr. Lipson: Your Honor, while we are on the subject of the letter, perhaps Mr. Haggerty would like to have the original and then—we have it and can make it available, unless he is satisfied with the photocopy in evidence.

Mr. Haggerty: Well, we will work along with what we have. Thank you.

Mr. Lipson: You are quite welcome, Mr. Haggerty.

[fol. 584] Mr. Haggerty: We may want it later. It's hard reading, but this is a young man with good eyesight.

Q. (By Mr. Haggerty) So, you waited four or six weeks. As a matter of fact, witness, you waited exactly seventeen days, didn't you?

A. It seems to me it was longer than that.

Q. Well, you have put yourself on record that it was four or six weeks. Now, you made your complaint on October 27, 1958, seventeen days later?

A. Yes.

Q. So there will be no mistake about it, you even attached a copy of your letter of October the 10th, '58 to Mr. Armour, didn't you?

A. Yes.

Q. Now, isn't it a fact that, regardless of what answer Mr. Armour would make to your ultimatum, the matter had developed in your thought process, with the advice of your counsel, to such a posture that you intended in any event to make a complaint to the Anti-Trust Division of the Department of Justice?

A. No.

Q. In other words, then, you didn't make this complaint to the Department of Justice as a public-spirited citizen; you made this complaint to the Department of Justice because you could not procure from Huck Manufacturing [fol. 585] Company and Mr. Armour the satisfaction that you wanted and as you requested in your letter of October 10th, 1958; isn't that a fact?

A. That is not——

Mr. Lipson: (Interposing) Your Honor, I feel I must object here. The question in issue is not Mr. Looker's motives, but whether the facts he has testified to are true or not.

Mr. Haggerty: Motive and intent is just as important, more important in this witness as probably any witness.

The Court: It may stand.

Q. (By Mr. Haggerty) Now, following your original complaint, sir, of October 27, 1958, you continued to correspond, did you not, with Mr. Sterritt?

A. Yes.

Q. And you corresponded with Mr. Sterritt for the purpose of obtaining a statement of Huck's position from Mr. Sterritt?

A. Yes.

Mr. Haggerty: Will you mark this, please?

(Whereupon, a document was marked as Defendant's Exhibit No. F, for Identification, by the Reporter.)

Q. (By Mr. Haggerty) You had authorized, had you not, your attorney, Mr. Pavitt, to correspond with the Depart-
[fol. 586] ment of Justice on and in your behalf?

A. Yes.

Q. Yes. And on November the 7th, 1958, as exhibited by Defendants' Exhibit F, for purpose of Identification, we find that Mr. Pavitt wrote a letter to Charles L. Beckler (spelling): B-e-c-k-l-e-r, Esq., Anti-Trust Division, United States Department of Justice, Washington, D. C.?

Mr. Lipson: Your Honor, if we are going to have the document read from, I prefer it to be put in evidence.

The Court: Let's indicate the date.

Mr. Haggerty: The date is November the 7th, 1958.

The Court: All right.

Mr. Haggerty: I have no objection to doing that. I will now offer this in evidence, after furnishing my brother with an opportunity of seeing it.

Mr. Lipson: No objection.

Mr. Haggerty: I also tender in evidence, at this time Defendants' Exhibit E, which is the letter of October 10th, '58, from Mr. Looker of the Brown-Line Corporation—by Mr. Looker, it's President—to Mr. A. Watson Armour.

The Court: That is the copy that originally the Government had?

[fol. 587] Mr. Lipson: We have no objection to this, your Honor.

The Court: Exhibits E and F may be admitted.

Mr. Haggerty: Now, your Honor, I will read portions of this letter.

The Defendants' Exhibit F is on the stationery of Smyth (Spelling) S-m-y-t-h & Roston (spelling) R-o-s-t-o-n, Patent, Trademark and Copyright Causes, 4262 Wilshire Boulevard, Suite 320, Los Angeles 5, California, with a telephone number.

And it shows in the upper hand that there is Smyth, Roston, a Keith D. Beecher and Jess M. Roberts, a registered patent attorney. And this letter is from that firm and signed by William H. Pavitt (spelling) P-a-v-i-t-t, Jr. It is addressed to Charles L. Beckler, Esq., Anti-Trust Division, U. S. Department of Justice.

(Reading):

"Dear Mr. Beckler:

"The Huck Company finally replied through its counsel, John C. Sterritt, Esq. of Harness, Dickey & Pierce, to Brown-Line Corporation's letter of October 10th, copy of which Mr. Looker and I left with you when we conferred with you on October 28th. A copy of Mr. Sterritt's reply is enclosed.

[fols. 588-591] "Mr. Looker has simply acknowledged Mr. Sterritt's reply on behalf of Brown-Line Corporation rather than take issue by extensive correspondence with the points made in Mr. Sterritt's letter. For your information, however, Mr. Looker has provided us with the following comments respecting the points raised in Mr. Sterritt's letter."

We will not read the points. (Reading)

"We would appreciate being advised as soon as it is known whether any investigation of the Huck-Townsend situation will be authorized by the Division.

Smyth & Roston,
Pavitt, Jr."

And a copy to R. Looker of the Brown-Line Corporation.

* * * * * * *

[fol. 592] Cross-examination. (Continued)

By Mr. Haggerty:

Q. Do you recall, Mr. Looker, that on September the 3rd, 1954, you spent practically the whole day with Mr. Sterritt, in Mr. Sterritt's office, going over a draft of the agreement, the Exhibit 17—Government's Exhibit 17?

A. I don't recall.

Q. You don't recall that?

A. No.

The Court: You do not recall what?

A. I don't recall spending the day, or substantial part of the day of September 3, 1954, with Mr. Sterritt.

The Court: That is Exhibit No. 17, you said?

Mr. Haggerty: 17.

The Court: And the date again?

Mr. Haggerty: September—the date of the meeting was September 3rd, 1954. It is the agreement which was finally [fol. 593] finalized on September 14, 1954.

The Court: All right.

Q. (By Mr. Haggerty) Handing you the Government's Exhibit 17, which is a finalized version of the license contract between Huck Manufacturing Company and Townsend Corporation—or Townsend Company, I will ask you if you, by looking it over, it refreshes your recollection that you were with Mr. Sterritt the greater portion of the working day of September 3rd, '54?

A. I don't deny it. I don't recall it.

Q. You don't deny it.

It would be nothing unusual for you having been with Mr. Sterritt on September the 3rd, isn't that true, 1954?

A. That is true, yes.

Q. Part of your duties with Huck Manufacturing Company during that interim of time was to consult with a patent counsel?

A. Yes.

Q. Now, you have told us that you have—and I think it has been received as an exhibit—that you requested a license to manufacture specials, is that true?

A. Yes.

Q. And you received a reply to that letter, did you not?

A. Yes.

(Whereupon a letter was marked Defendant's Exhibit [fol. 594] No. G, for identification, by the reporter.)

Q. (By Mr. Haggerty) I hand you, marked for identification, the Defendant's Exhibit G and ask you to read it, if that refreshes your recollection?

A. It does, yes.

Q. Mr. Armour promptly replied to your request, did he not?

A. Yes.

Q. And he stated that he thanked you for your letter of July 13th.

Mr. Haggerty: At this time I hand for examination to brother counsel Defendant's Exhibit G, for the purpose if he has any objection thereto.

The Court: What is the date of that letter, Mr. Haggerty?

Mr. Haggerty: July the 13th, 1956.

Mr. Lipson: No objection.

Mr. Haggerty: Received in evidence, your Honor?

The Court: It may be received.

Q. (By Mr. Haggerty) Defendant's Exhibit G reads and is on the stationery of the Huck Manufacturing Company, and it is dated July 18, 1956. Addressed to Mr. Robert Looker, the Brown-Line Corporation:

"Dear Bob:

"Thank you for your letter of July 13th. Your request gives rise to certain complications which we have not [fol. 595] been able to surmount. We are giving the matter further consideration and will let you know the results at a later date.

"Sincerely yours, "Huck Manufacturing Company.
"A. Watson Armour, III, "President."

Now that was in reply to your first request for a license, isn't that true?

A. Yes.

Q. So there will be no misunderstanding, you didn't ask for a license to manufacture steel lockbolts, that is, of what would be called the ordinary lockbolts?

A. I believe the request was directed to special type of lockbolt devices.

Q. Special?

A. Yes.

Q. And what do you mean by "specials"?

A. Other than standard.

Q. In other words, your requests were for specials which are unusual size lockbolts, is that true?

A. Size, material or function.

Q. Yes. And they are a matter—they are lockbolts that are not kept in regular stock, is that true?

A. They weren't manufactured at that time.

[fol. 596] Q. They weren't manufactured at all at that time?

A. No.

Q. Now, you replied to Mr. Armour's letter, did you not?

A. I am not certain if I did or not.

(Whereupon, a letter was marked Defendant's Exhibit No. H, for identification, by the reporter.)

Q. (By Mr. Haggerty) I hand you marked for identification the Defendants' Exhibit H, and ask you if that refreshes your recollection?

A. It does, yes.

Q. And is that a photostatic copy of a letter that was written by you?

A. Yes.

Q. And the original was signed by you?

A. Yes.

Mr. Haggerty: I hand to counsel, for examination, Defendant's Exhibit, marked for identification, H.

Mr. Lipson: Your Honor, we have no objection to this document, except we would like to note that there apparently is no date on this letter, except there is a handwritten notation on the margin which has apparently been applied to the photostatic copy itself, and we would object to that being included along with the letter.

Mr. Haggerty: We are agreeable to exclude that.

The Court: All right.

[fol. 597] Mr. Lipson: Otherwise, we have no objection.

Q. (By Mr. Haggerty) Now, in reply to Mr. Armour's letter—it is on the stationery of Brown-Line Corporation and without date on the letter itself—it is addressed to Mr. A. Watson Armour, president, Huck Manufacturing Company, 141 West Jackson Boulevard, Room 4015, Chicago 4, Illinois.

"Dear Mr. Armour:

"I thank you for your letter of July 18th on the license requested. I appreciate the complexities of the question at hand and the time required to see them through. I do hope, however, that we will be able to

get the matter settled while I am still here to save extra travel and trouble of negotiating 3000 miles away and to permit the kind of planning a new business must have.

"Thank you again for your interim report.

"Yours sincerely, "The Brown-Line Corporation,
"Robert Looker."

Now, in the year 1957, Mr. Looker, did you apply for a patent on a lockbolt?

A. Yes. I believe that was the year, I am not certain of it, though.

Q. Your best recollection?

[fol. 598] A. Yes.

Q. And eventually that patent to manufacture that lockbolt, use and sell, was granted to you, is that right?

A. Yes.

(Whereupon, a letter was marked Defendants' Exhibit No. I, for identification, by the reporter.)

Q. (By Mr. Haggerty) Now, I hand you, marked for identification, the Defendant's Exhibit I, and ask you to read it.

Mr. Lipson: Your Honor, if I may, I would like to have a chance to examine the document prior to——

The Court: (Interposing) I think he meant read it to himself.

Mr. Haggerty: Read it to himself, not aloud, of course not. I am sorry.

A. I have read the document.

Q. (By Mr. Haggerty) You have read it. Now, does that refresh your recollection that you wrote to the Illinois Tool Works in reference to this lockbolt?

A. Yes.

Q. And your purpose in writing the Illinois Tool Works was to interest them in taking a license from Brown-Line Corporation?

A. Yes.

Q. Isn't that true?

A. Yes, it is.

Q. Now, you received a reply to your letter, did you not?
[fol. 599] A. I believe so, yes.
Q. Well, so that there will be no doubt in your mind——

(Whereupon, a letter was marked Defendants' Exhibit J, for identification, by the reporter.)

Q. (By Mr. Haggert) A rather poor copy, it is the best I can afford.

The Court: What is the date of this?

A. April 18, 1957.
Q. (By Mr. Haggerty) So, on April the 18th, 1957, you received a reply to your letter from the Illinois Tool Works to your letter of April the 8th, 1957, which is the date of the exhibit. I can't ask you to see at that distance—isn't that correct, referring (handing exhibit to witness)?
A. Yes, it is.
Q. And that refers to the Defendants' Exhibit I, so marked for identification.
Now, considerable correspondence passed between you —or the Brown-Line Corporation and the Illinois Tool Works, isn't that true?
A. I believe so.
Q. In reference to—in your effort to have them take a license from you on this particular lockbolt?
A. Yes.

(Whereupon, a letter was marked Defendants' Exhibit No. K, for identification, by the reporter.)

[fol. 600] Q. (By Mr. Haggerty) I hand you marked for identification the Defendants' Exhibit K and ask you to read it to yourself.
A. (Witness complies.)
Q. Have you read it?
A. Yes, I have.

Mr. Haggerty: I hand to counsel for examination Defendants' Exhibit K, so marked for identification.
Mr. Lipson: We have no objection to this document.
The Court: It may be received.
Mr. Haggerty: I offer it in evidence, may it please the Court.
The Court: It may be received. What is the date?

Mr. Haggerty: I shall read it, your Honor.

The Court: All right.

Mr. Haggerty: It is dated September the 10th, 1957. It is on the stationery of the Illinois Tool Works. At 2501 North Keeler Avenue, Chicago 39, or 30, I can't make it out, Illinois.

"Mr. Robert Looker, President "Brown-Line Corporation, "111 Main Street, "El Segundo, California.
"Subject: Looker Commercial Lock Bolt."

Then this was a commercial lockbolt?

A. Yes.

[fol. 601] Q. In distinction from a lockbolt that was to be used in airplanes?

A. Yes.

Q. (Reading):

"Dear Bob:

"I would like to apologize for not forwarding our legal department's comments pertaining to your lock bolt application sooner. I have been quite busy since returning from the West Coast as Milt Miner and his boys have somewhat snowed me under with projects."

Now, was Milt Miner a stockholder and an officer of the Brown-line Corporation?

A. Yes.

Q. He was at that time?

A. Yes.

Q. He still is?

A. Yes.

Q. (Reading):

"I am enclosing a copy of a confidential letter which originated in our patent department, for your inspection and comments. It seems in essence that our attorneys feel that you would be allowed some specific improvement protection on your device, but would still be dominated by Huck Patent 2754703."

And that is a Huck Patent, to your knowledge?

[fol. 602] A. Yes, it is.

Q. (Reading):

"I am sure that you are very familiar with the existing and expired art on fasteners of this nature and also are aware of the claims made in the above-mentioned patent. We would sincerely appreciate your comments to this letter before further work can be done on our part.

"I am sure you know that we are definitely interested in manufacturing a fastener of this type as this would be undoubtedly beneficial to Brown-Line Corporation, Miner and Associates, and Illinois Tool Works."

Now, as to identification of Miner and Associates, was that a sales organization under the name of Miner and Associates?

A. Yes, it is.

Q. Mr. Miner and some other persons were partners, or was it a corporation, if you know?

A. It was a corporation.

Q. Were you interested in that corporation?

A. No.

Q. That is, Mr. Miner and someone else were the stockholders in that corporation?

A. Yes.

Q. (Reading):

"I am also enclosing a sketch of a thread rolled pigtail."

[fol. 603] Now, that don't mean anything to me, and I don't believe it means much to the jurors. We don't think of pigtails as being thread rolled. Now, what is a thread rolled pigtail?

A. I am not sure it means much to me right now either.

Q. I see. (Reading):

"Which would be used as an installation means to drive the blind bolt which I have developed. It has been placed on file in our patent office and I thought that you may be interested in seeing that we have incorporated your suggestion and sincerely appreciate your assistance.

"Yours very truly, "Illinois Tool Works, "Thomas R. Boyd——"

(spelling) B-o-y-d,

"Executive Engineer."

(Whereupon, a letter was marked Defendants' Exhibit No. L, for identification, by the reporter.)

Q. (By Mr. Haggerty) I hand you, marked for identification, the Defendants' Exhibit L, and ask you to read it to yourself.

A. (Witness complies.)

Q. Have you read it, sir?

A. I have, yes.

Mr. Haggerty: I hand to counsel for examination de-
[fol. 604] fendants' Exhibit No. L, so marked for identification.

Mr. Lipson: We have no objection to this document.

Q. (By Mr. Haggerty) Does this bear your—this is a photostatic copy of a letter which you signed, is that true?

A. I assume so, yes.

Q. Yes.

A. I don't recall having dictated the letter.

Q. You don't have any distinct recollection, but this does refresh your recollection, and I say "this", I mean Defendants' Exhibit L, so marked for identification?

A. Yes, it does.

Mr. Haggerty: I offer it in evidence, may it please the Court.

The Court: It may be received.

Q. (By Mr. Haggerty) This is a letter dated November 27, 1957, and it is addressed to Mr. John S. Hawley, (spelling) H-a-w-l-e-y.

"Manager, Market Planning, "Illinois Tool Works, "2501 North Keeler Avenue, "Chicago 39, Illinois.

"Dear John:

"This letter is in reply to Tom Boyd's letter of September 10, and is addressed to you as I understand that

Tom is in process of moving his activities to Califor-
[fol. 605] nia. "I am enclosing a copy of a letter dated November 26 from our patent attorney, George Smyth."

George Smyth, (spelling) S-m-y-t-h, was the patent attorney who applied for the patent on this particular commercial lockbolt?

A. Yes.

Q. (Reading):

"—which gives the conclusions on a possible domination of Huck Patent 2,754,703 over our Application 639474.

"As you will note, Mr. Smyth's opinion is quite firm to the negative, and based upon which opinion, we would like to suggest patent license negotiation.

"Looking forward to the pleasure of hearing from you soon, we remain, "Brown-Line Corporation, "R. Looker, "President."

In other words, in the existing—in the exhibit—Defendants' Exhibit No. K, when they asked you for a reply under date of September the 10th, your reply was contained in the letter I have just read, November the 27th, 1957?

[fol. 606] A. Apparently, yes.

Q. Can you read your own handwriting?

A. Yes, generally.

Q. You can. All right.

(Whereupon, a letter was marked Defendants' Exhibit No. M, for identification, by the reporter.)

Q. (By Mr. Haggerty) I hand you a rather poor photostat marked Defendant's Exhibit M and a sheet of paper attached to it which seems to be a translation of your longhand writing.

Will you examine it.

A. (Witness complies.)

Q. You have read it?

A. Yes, I have.

Q. Now, did the negotiations that you conducted with Illinois Tool Works to license your commercial lockbolt to

them for manufacture, use and/or sale, did that ever develop——

A. (Interposing) No.

Q. (Continuing) —into a license agreement?

A. It did not.

Q. Did you, then attempt to interest others to license your commercial lockbolt?

A. Yes.

Q. And was amongst those that you attempted to interest the so-called Aviations Development, Inc.—Incorporated?

A. No.

[fol. 607] Q. How?

Did you attempt to interest Mr. John Bunney—(spelling B-u-n-n-e-y, Director of the Aviations Development, Inc.?

A. I believe it is Aviations Development Limited in England. There is an Aviations Development Incorporated, in Burbank, California. I did attempt to license the product to Aviations Development, Limited, in England, yes.

Q. Did your negotiations with them result in a license to the Aviations Development, Limited, in England?

A. No.

Q. Now, did you also attempt to interest Huck in licensing—Huck Manufacturing Company, in licensing this commercial lockbolt?

A. Yes.

Q. And did you succeed?

A. No.

Q. Did you attempt to interest any other source and did you, in your negotiations, with Huck, did you not proceed to the point where you sent four sheets of drawings of your commercial lockbolt to Huck?

A. Yes.

Q. And, as a result of that, you received some correspondence from Huck?

A. Yes.

[fol. 608] (Whereupon, a letter was marked Defendants' Exhibit No. N, for identification, by the reporter.)

Q. (By Mr. Haggerty) I hand you marked for identification the Defendants' Exhibit N, and ask you to read it to yourself.

A. (Witness complies.)

Q. You have read it?

A. Yes.

Mr. Haggerty: I hand to counsel for examination marked for identification Defendants' Exhibit N, a letter.

Mr. Lipson: No objection.

The Court: It may be received.

Q. (By Mr. Haggerty) The Defendants' Exhibit N is a letter on the stationery of Harness, Dickey and Pierce, attorneys and counselors, General Motors Building, Detroit.

Dated May 14, 1958.

"Mr. Robert Looker
"Brown-Line Corporation
"111 Main Street
"El Segundo, California.

"Dear Bob:

"Thank you for your letter of May 5. Attached hereto are the four sheets of drawings, figures one through sixteen, which you sent me.

"I am sure that you must realize that manufacture and sale of the fastener disclosed in these drawings [fol. 609] would be infringements of the Huck Lockbolt Patents with which you are familiar. They could only be manufactured and sold by Huck itself or someone licensed under the Huck Patents.

"We look forward to seeing you and Mary when you get back to Detroit.

"With best regards, sincerely, John Sterritt."

Now, was that the culmination of your negotiations with Huck, the letter of John Sterritt, in which he advised you that in his opinion the manufacture and sale of the fastener disclosed—that is the commercial lockbolt—by your drawings would be infringements of the Huck Lockbolt Patents?

A. I think there was another letter, too.

Q. A letter written by you or a letter written by Mr. Sterritt, if you have a recollection?

A. There was a letter written by someone at the Huck Company, I don't remember who.

Q. I see. But, in any event, you did not license this commercial lockbolt to Huck?

A. That is correct.

Q. As a matter of fact, have you ever licensed it to anyone?

[fol. 610] A. No.

Q. Have you attempted to license it other than to the companies which you have enumerated?

A. I don't believe so, no.

(Whereupon, a letter was marked Defendants' Exhibit O, for identification, by the reporter.)

Q. (By Mr. Haggerty) I hand you marked for identification Defendants' Exhibit No. O, and ask you to read it to yourself.

A. (Witness complies.)

Q. You have read it?

A. Yes.

Q. Now, prior to March 30th, 1960, you had made a request of John Sterritt to obtain a license from Huck for Brown-Line to manufacture and sell special lockbolts, isn't that true?

A. I believe there were two requests, one for special lockbolts, and one for general lockbolts.

Q. All right. And this letter, which is marked Defendants' Exhibit O, was the reply that you received?

A. This was a reply, yes.

Q. All right. It was a reply from John Sterritt?

A. That is correct, yes.

Mr. Haggerty: I hand to counsel for examination Exhibit marked for identification O—Defendants' Exhibit O.

Mr. Lipson: No objection.

The Court: It may be received.

[fol. 611] Q. (By Mr. Haggerty (Defendants' Exhibit O is a letter on the stationery of Harness, Dickey and Pierce, General Motors Building, Detroit, Michigan, dated March 30, 1960.

(Reading):

"Mr. Robert Looker
"Brown-Line Corporation
"111 Main Street
"El Segundo, California

"Dear Bob:

"This is in reply to your letter of March 2nd, 1960.

"I have been in Europe for five weeks, and I am just getting caught up in my correspondence.

"I am advised by Huck that business conditions at the present and within the foreseeable future do not justify the granting of any further licenses now."

Now, your request for this license, as evidenced by the reply, contained in the Defendants' Exhibit O, is a considerable period of time, namely, the reply came March 30th, 1960.

You had filed complaint with the Government on or about October the 27th, 1958, isn't that correct?

A. That is correct, yes.

Q. Now, this request that you made for a license and in which you received a reply in 1960 was simply for the pur-
[fol. 612] pose of obtaining additional information and possible additional evidence for—which to give to the Anti-Trust Division of the Department of Justice, isn't that right?

A. No, it is not.

Q. Well, let's examine it. You had filed a formal complaint?

A. Yes.

Q. You had on October the 28th, or thereabouts, conferred in Washington with a representative of the Department of Justice?

A. Yes.

Q. You had again filed an affidavit dated the 17th of April, '58—you had filed through your counsel, Mr. Pavitt, an affidavit with the Department of Justice?

A. Yes.

Q. You have before this—receiving this letter, the Defendants' Exhibit O, dated March 30th, 1960, filed a second

affidavit with the Department of Justice on the 26th day of March, 1960, had you not?

A. Yes, I had.

Q. So, you didn't have any sincere hope at that time that you would obtain a license of any kind from Huck, did you?

A. I did, yes.

Q. What was your hope predicated upon?

A. That the Huck Company would change its mind and issue a patent license to our company.

[fol. 613] Q. Did you think by that time that you had intimidated Huck to such a point where they would grant you a license?

A. I had intimidated no one.

Q. Do you recall the letter that you wrote to Mr. Armour giving him three, or possibly, four options?

A. I do, yes.

Q. And in that letter you mentioned the fact of a complaint being filed against Huck with the Department of Justice, Anti-Trust Section?

A. Yes.

Q. Don't you think, in all honesty, that that was a threat?

A. It could be construed to be as one, yes.

Q. Yes. And don't you think it was a threat with an implication of intimidation?

A. It would be a matter of interpretation.

Q. What is your opinion, that is what I am searching for?

A. My opinion is that the intimidation was in the opposite direction, and that our company was trying to establish a legal competitive business and was restrained from doing so.

Q. And you do not think, then, that at the time that you requested a license and Mr. Sterritt replied by the letter of March the 26th, or March 26th, 1960—you do not think, then, at that time you were attempting to use intimidation?

A. I don't believe so, no.

[fol. 614] Mr. Lipson: Your Honor, for the purposes of the record, is the letter—the date of the letter the 26th?

Mr. Haggerty: Well, I will check it. I may be wrong. It may be March 30th.

It is March 30th, thank you.

Mr. Lipson: You are welcome. May that be corrected so that the letter that we speak of is March 30th?

Q. (By Mr. Haggerty) Now, I think—strike that.

Did you have a meeting with Mr. Lipson in the month of October, 1960, at the City of Detroit?

A. I don't independently recall the date or the time.

Q. Do you recall that you testified in Detroit before a Grand Jury?

A. I do, yes.

Q. Do you recall that you did testify in the month of October, 1960?

A. No.

Q. You have no recollection?

A. Not of the month, no.

Q. Have you a recollection of having a visit, and a conference, a conversation with Mr. Lipson on or about October, 1960, in Detroit, perhaps on or about that time?

(Whereupon, a letter was marked Defendants' Exhibit No. P, for identification, by the reporter.)

[fol. 615] Q. (By Mr. Haggerty) I hand you marked the Defendants' Exhibit P, and ask you to read it to refresh your recollection. Read it to yourself.

A. (Witness complies.)

Q. Have you read it, sir?

A. I have, yes.

Q. Now, I will ask you, having read the exhibit, Defendants' Exhibit P, so marked for identification, does it refresh your recollection that on October the 14th, 1960, you wrote a letter to Mr. Lipson, attorney, Anti-Trust Division, Department of Justice, Washington, D.C.?

A. Yes.

Q. And is your recollection refreshed that in your letter to Mr. Lipson you mentioned a pleasant meeting in Detroit? Do you recall that?

A. Yes, I do.

Q. Now, does that refresh your recollection—memory, that prior to October the 14th, 1960, you did have a meeting with Mr. Lipson at the City of Detroit?

A. Yes.

Q. And that was in reference to the original complaint that you had made against the Huck Corporation?

A. It was in reference to a Grand Jury proceeding.

Q. All right, a Grand Jury proceeding?

A. Yes.

[fol. 616] Q. But, the origin of it was the complaint that you filed?

A. I don't know that, sir.

Q. You do not know that?

A. No.

Q. Now,——

(Whereupon, a group of letters were marked Defendants' Exhibits Nos. Q and R, for identification, by the reporter.)

Q. (By Mr. Haggerty) I hand you Defendants' Exhibit Q, so marked for identification, and ask you to read that letter to yourself.

A. (Witness complies.)

• • • • • • •

[fol. 617] Mr. Haggerty: I hand to Mr. Lipson marked Defendants' Exhibit Q, for identification.

Mr. Lipson: No objection.

The Court: It may be received——

[fol. 618] Mr. Haggerty: (Interposing) I am not offering it in evidence. It is merely for the purpose of refreshing his recollection.

The Court: All right.

Q. (By Mr. Haggerty) You did, did you not, sir, under date of October 21, 1960, receive a letter from the United States Department of Justice, addressed to yourself as president of the Brown-Line Corporation?

A. Yes.

Q. And that letter was signed by Mr. Robert A. Bicks, (spelling) B-i-c-k-s, Assistant Attorney General, Anti-Trust Division?

A. Yes.

Q. And when you received that letter, you showed copies or had copies made for Mr. Pavitt?

A. Yes.

Q. Mr. Miner?

A. Yes.

Q. And a Mr. White?

A. Yes.

Q. And can you identify Mr. White?

A. Mr. White, named John A. White, and he is the company's general counsel.

Q. I see.

The Court: Let's take a ten minute recess.

[fol. 619] (At 10:40 o'clock A.M., a short recess was had.)

AFTER RECESS

(Whereupon, a photostatic copy of a letter, dated October 20, 1960, was marked as Defendants' Exhibit S, for identification, by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you, marked for identification, Defendants' Exhibit S, and ask you to read it to yourself, please.

The Court: What happened to R?

Mr. Lipson: We have no R, either.

Mr. Haggerty: Thank you, your Honor, and the Reporter thanks you, too.

Q. (By Mr. Haggerty, continuing) You have read it?

A. I have, yes.

Mr. Haggerty: And I hand to counsel for examination. It is marked for identification Defendants' Exhibit S.

Mr. Lipson: I have no objection to this document, except that I would like to know, it is marked S, but is the document we were just discussing as R?

Mr. Haggerty: Yes, sir. I offer in evidence, may it please the Court, Defendants' Exhibit S.

[fol. 620] Mr. Lipson: No objection.

The Court: It may be received.

Q. (By Mr. Haggerty, continuing) Mr. Looker, you gave full cooperation with the Anti-Trust Section of the Department of Justice, did you not?

A. Yes.

Q. And you even went into personal effects of your late stepfather, did you not?

A. I believe at one time I referred to a telephone book that I had in my possession, yes, that belonged to Mr. Huck.

Q. Well, you will answer my question, then, will you, please? Did you go into the personal effects of your deceased stepfather?

A. Yes.

Q. Now, Defendants' Exhibit S reads——

(Reading):

"United States Department of Justice
"Washington, D.C.
"Mr. R. Looker
"President
"Brown-Line Corporation."

And the address, (reading):

"Dear Mr. Looker:"

The Court: The date?

Mr. Haggerty: October the 20th, 1960.

[fol. 621] Q. (By Mr. Haggerty, continuing and reading):

"The information contained in your letter of October 12, 1960, addressed to Mr. Lipson of my staff, will be quite useful.

"We note that the information was obtained from the personal effects of Mr. L. C. Huck. It would assist us to know the circumstances under which these papers came into your possession. In addition, it would be helpful if you would let us know whether or not you are related by blood or marriage to the late Mr. L. C. Huck or any of his relatives, or to any other persons who were at any time officers, stockholders or employees of the Huck Manufacturing Company. If so, the complete details of such relationship would be appreciated.

"Thank you for your cooperation.

"Robert A. Bicks."

(spelling) B-i-c-k-s.

(Reading and continuing):

"Assistant Attorney General
"Anti-Trust Division."

(Whereupon, a photostatic copy of a letter, dated October 24, 1960, was thereupon marked as Defendants' Exhibit R, for identification, by the reporter.)

[fol. 622] Q. (By Mr. Haggerty, continuing) I hand you Defendants' proposed Exhibit R, and ask you to read it to yourself.

A. (Witness complies.)

Q. You have read it?

A. I have, yes.

Mr. Haggerty: I hand to counsel for examination Defendants' proposed Exhibit R.

Mr. Lipson: Thank you.

Mr. Haggerty: I will tender in evidence, may it please the Court, Defendants' Exhibit R.

Mr. Lipson: No objection, your Honor.

The Court: It may be received.

Q. (By Mr. Haggerty, continuing) Dated October 24th, 1960, addressed to (reading):

"Mr. Robert A. Bicks
"Assistant Attorney General
"Anti-Trust Division
"United States Department of Justice
"Washington, D.C.,

"Gentlemen:

"In reply to your letter of October 20, 1960, Mr. L. C. Huck was my step-father, and upon his death, his personal possessions which were in his office at the time of his death, were given to his principal heir, my [fol. 623] mother, and his telephone notebooks from which the names given you were obtained were among such effects.

"If I can do anything further to be of assistance, please do not hesitate to advise.

"Sincerely yours, "Brown-Line Corporation, "R. Looker, "President."

Now, these names that you referred to were the names of individuals?

A. Yes.

Q. And they were individuals which, in your opinion, may have some connection with this litigation now before this Court and Jury?

A. Yes.

(Whereupon, a two-page photostatic copy of a letter, dated November 2, 1960, was thereupon marked as Defendants' Exhibit T, for identification, by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you Defendants' Exhibit T and ask you to read it to refresh your recollection.

A. (Witness complies.)

Q. Have you finished reading it?

A. I have, yes.

Mr. Haggerty: I hand to counsel for examination, marked for identification Defendants' Exhibit T.

[fol. 624] Mr. Lipson: Thank you. We have seen it.

Q. (By Mr. Haggerty, continuing) Does it refresh your recollection, as of November 2nd, 1960, that you wrote a letter to Mr. Robert A. Bicks, Assistant Attorney General?

A. It does, yes.

Q. Yes. And does it refresh your recollection, having read, marked for identification Defendants' Exhibit T, that you gave to the Government or furnished to the Government the name of Mr. George Q. Mathews?

A. It does, yes.

Q. And you told him he had resigned his position as vice president in charge of sales of Huck Company and has taken another sales management position in Southern California?

A. Yes.

Q. And did you also tell the Government in a letter that they could feel free—that they could feel free to call upon you or call upon us for any information within our knowledge.

A. Yes.

(Whereupon, a two-page photostatic copy of a letter, dated February 8, 1961, was marked as Defendants' Exhibit U, for identification, by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you Defendants' proposed Exhibit U and ask you if the photostatic copy of this is a copy of an original which you wrote and which bears your signature?

[fol. 625] A. May I read it?

Q. I'm not asking you to read it. I just asked you the question, by looking at the signature or the place for the signature——

A. (Interposing) I would assume that to be correct.

Mr. Haggerty: I hand to counsel for examination Defendants' Exhibit U, so marked for identification.

Mr. Lipson: Thank you.

Mr. Haggerty: I offer in evidence, may it please the Court, Defendants' Exhibit U.

Mr. Lipson: Your Honor, at this time we would like to object to that portion of the document that refers to a matter not even remotely connected with this case, solely on the grounds that it may conceivably prejudice the Government's action, if any is contemplated in the other matter.

I would rather not go into details, your Honor, but if you examine the document, I think you can understand what I am referring to.

Mr. Haggerty: I may say, may it please the Court, that it is offered to show the motive, the intent of this man, his attempt to curry favor and good will of the Department of Justice, which all goes to motive, and I think is highly pertinent to the issues here as to his credibility.

The Court: It may be received in its entirety.

Mr. Haggerty: Thank you.

Q. (By Mr. Haggerty, continuing)

[fol. 626] (Reading):

"February 8, 1961
"U.S. Department of Justice
"Washington, D.C.
"Attention: Mr. Robert A. Bicks
"Assistant Attorney General
"Anti-Trust Division.

"Gentlemen:

"I first would like to offer my congratulations to your department for the splendid work in breaking up the price-fixing conspiracy in the electrical industry as reported in the local press. It appears as though a most expert job was done, and I am certain that the remainder of the electrical industry, as well as the public, are most grateful.

"I have also to report an incident to you on an attempt to fix prices made to us by one of our competitors.

"About the middle of December, 1960, a Mr. Theodore Bassett, Sales Manager of the Aircraft Division of the General Logistics Division of the Aeroquip Corporation, made a luncheon date with our Sales Manager, Mr. George Christena, at "Robbs Steeple-
[fol. 627] chase" restaurant in El Segundo, and during such time Mr. Bassett proposed that General Logistics Company and Brown-Line Corporation enter into a price-fixing agreement covering aircraft seat fittings and cargo tie down fittings, both companies manufacture under Patent License from Pan American World Airways. He cited the present close price competition on such parts giving as an example seat fittings purchased by Hardman Tool and Engineering Corporation of Los Angeles. The price for such fittings at one time was between $12.00 and $20.00 each, and now with price competition is about $3.00. With price fixing in effect, Mr. Bassett indicated that we could both make a substantial profit in the buyer's of our parts could select their source on the engineering, quality, and service rather than price.

"Mr. Bassett further said that the General Manager of General Logistics, a Mr. Lloyd Jones, had already made such a proposal (or other like products) to a Mr. Frank L. Davis, President of Davis Aircraft Products, Inc., 1191-5 S Spoffard Avenue, New York 59, New York, and that such proposal was denied by Mr. Davis. He further believed that Mr. Jones also [fol. 628] called on the other member of our small industry, Eastern Rotocraft Corporation of Doylestown, Pennsylvania, with a similar proposal which was also denied.

"Mr. Jones was a Sales Manager, of the Aeroquip Corporation, of Jackson, Michigan, before being appointed General Manager of the General Logistics division. Mr. Bassett said that Mr. Jones had told him that such price fixing was in effect in the aircraft hose business (Aeroquip's principal business) and that it worked well there.

"Although Mr. Christena subsequently denied the request to enter into a price-fixing agreement, we felt that the entire story may be of interest to you, particularly the hearsay information that price-fixing is in effect in the aircraft (and missile) hose business which is a substantial industry. I have no personal knowledge of such a situation, but the Mr. Jones, Mr. Bassett authority should be considered good.

"Should you desire, Mr. Christena would be pleased to put the details of his meeting with Mr. Bassett in the form of an affidavit. Additionally, should you [fol. 629] wish us to cooperate in any specific way, please do not hesitate to so advise.

"On the Huck matter, we have been somewhat anxiously awaiting the report that action would be taken. We understand that these matters take time but if you will recall, we first called the Huck monopoly to your attention two and one-half years ago. As the violations of the law are in this case substantial and easily provable, we ask again that prompt action be taken.

"On Mr. Armour's attitude, it was reported to me by another not long ago that Mr. Armour has declared that he will fight his case 'if it takes my last cent',

that it was a matter of principle. If this proves to be true, your department may have a good court case to which to look forward, but in any event we ask for prompt and decisive action to free the lockbolt and blind rivet industry and users from illegal burdensome monopoly.

"Very sincerely yours, "Brown-Line Corporation,
"R. Looker, "President."

[fol. 630] (Whereupon, a photostatic copy of a letter, dated April 10, 1961, was marked as Defendants' Exhibit V, for identification by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you Defendants' proposed Exhibit V, and ask you, is it a photostatic copy of a copy of a letter which you wrote and signed the original?

A. Yes.

Mr. Haggerty: I hand to Government counsel for examination Defendants' proposed Exhibit V.

Mr. Lipson: We have examined the document.

Mr. Haggerty: I offer in evidence Defendants' proposed Exhibit V.

Mr. Lipson: No objections, your Honor.

The Court: It may be received.

Mr. Haggerty: May it be read, your Honor?.

The Court: All right.

Q. (By Mr. Haggerty, continuing) It is a letter (reading):

"April 10, 1961

"United States Department of Justice,
"Washington, D.C.

"Attention: Mr. Lee Loevinger,
"Assistant Attorney General
"Anti-Trust Division.

"Dear Mr. Loevinger?

[fol. 631] "Many thanks for your letter of April 4, 1961. You can expect to hear from Mr. Christena promptly.

"We were disappointed to hear that no action has been taken on the Huck matter. Our company and others have been victim to the harassments of an illegal patent monopoly and have provided substantial evidence to your department thoroughly indicating the needs for public action. Two and one-half years have passed since complaint against such illegal monopoly was made, and in the interim harassment continues and the statute of limitations runs out on offenses one by one.

"In our attempt to understand the reasons for delay in these matters, we have questioned those skilled in Anti-Trust litigation and have thus been led to understand that your department negotiates with offenders of the Anti-trust Statutes, and that this is the probable cause of the delay noted.

"As the matter is still with the Grand Jury in Detroit, unless you have further evidence for it, we respectively ask that it be asked for its decision. If it is the policy of your department to negotiate with, [fol. 632] or otherwise contain, offenders of the Anti-trust Statutes we request that we be so informed.

"Looking forward to the pleasure of hearing from you further in this matter, I remain,

"Very sincerely yours, "Brown-Line Corporation, "Robert Looker, "President."

(Whereupon, a two-page photostatic copy of a letter, dated July 26, 1961, was marked as Defendants' Exhibit W, for identification by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you Defendants' proposed Exhibit W, and ask you if it is a carbon copy of a letter, the original of which you signed?

A. It's not a carbon copy, photostat of a carbon copy.

Q. Photostat of a carbon copy, yes, sir.

A. Yes.

Mr. Haggerty: I hand to Government's counsel Defendants' Exhibit W.

Mr. Lipson: We have examined the document.

Mr. Haggerty: I offer in evidence, may it please the Court, Defendants' Exhibit W.

Mr. Lipson: No objections, your Honor.
The Court: It may be received.

[fol. 633] Q. (By Mr. Haggerty, continuing) Now, Defendants' Exhibit W, witness, bears date of July 26. We have read the Defendants' Exhibit U, which is dated February 8, '61, in which you request the Department of Justice for action; again, the defendants' Exhibit V, dated April 10th, in which you request the Government for action, and ask them certain questions about their method of handling their business; and then on July 26th, you write them another letter, and this is the letter——

(Reading):

"July 26, 1961 "Mr. Lee Loevinger • • •"

Is that name pronounced Levinger?
Mr. Lipson: Levinger, yes, sir.
Mr. Haggerty: Levinger.
Mr. Lipson: That's the correct pronunciation.

Q. (By Mr. Haggerty, continuing)

(Reading):

"Mr. Lee Loevinger, "Assistant Attorney General, "Anti-Trust Division. "U.S. Department of Justice, "Washington, D.C.

"Dear Mr. Loevinger?"

I have—the date is July 26th, '61, (reading):

"It has been sometime since I wrote you on the Huck Matter and since that time I have seen the Huck [fol. 634] patent attorney, Mr. John C. Sterritt, on several occasions, as I am involved in a patent office interference on Huck's behalf on an invention I made while employed by Huck, and have employment contractual obligations to Huck to assist in prosecution of patents made while in Huck's employ and thereby have assigned to Huck.

"At one time Mr. Sterritt told me that the investigations and hearings by your department had been costly to Huck (in what way I do not know) and that it was

Huck's opinion that our company, or myself in particular, had 'incited' your department into conducting the useless investigations and that unless indictments come from the Grand Jury in Detroit, Huck would take action either against Brown-Line Corporation or myself (Mr. Sterritt did not make this clear). Mr. Sterritt indicated to me that this was Mr. Armour's decision.

"Although we have been unable to collaborate having any liability * * * "

What do you mean by that?

A. I'm not certain what I meant by it. I believe probably that I meant that our attorneys——

[fol. 635] Q. (Interposing) It's there.

A. (Continuing)—have been unable to determine that we have a liability to Huck.

Q. (Reading):

"As you know, prices for lockbolt pins and collars were fixed in the Huck-Townsend Patent Agreement for a two-year period and extended by verbal agreement between Mr. Armour and Dickenson. The lockbolt collars also have very substantial use with unpatented lockbolt 'stumps' (later licensed also to Townsend by Huck on 'Know-how') and that this substantial supplementary application was known to both parties at the time prices were fixed.

"Assuming first that price fixing in a patent agreement is legal, the point of law which comes to mind is, is price fixing in a patent agreement for a part of the patented combination (collars) which has substantial unpatented use (with stumps and therefore by statute free of patent encumbrance) also legal.

"It would seem not to me, as it would then be legal to fix prices on, for example, all sales of a motor of a patented motor-pump combination in a patent license when the motor had substantial non-infringing use. [fol. 636] By this means prices could be legally fixed on almost any article of commerce and the only expedient would be to get such item included as part of a patented combination. An important point is that lockbolt pins and collars are sold separately, as are

lockbolt stumps and (at least for the airframe industry) the same collars are used on lockbolt pins and stumps. Additionally, most aircraft lockbolt users buy and use both pins and stumps and buy collars for both at one time, lockbolt parts generally considered 'open stock' materials, and that prices were fixed for the collars as well as the pins by agreement.

"I am quite certain that the point is well covered but in the event that it had not, I thought it well to bring up."

Now, with certainty, Mr. John Sterritt is a patent lawyer?

A. Yes.

Q. And he's associated with the firm of Harness, Dickey and Pierce?

A. Yes.

Q. And it was the patent law firm of Harness, Dickey and Pierce that did the patent work for Huck Manufacturing Company?

A. Yes.

Q. And most of that work was done—at least, contacts [fol. 637] with Huck, in your—to your knowledge, and the man in Harness, Dickey and Pierce that had that contact with Huck was Mr. John Sterritt?

A. Yes.

Q. Also, from time to time, is it within your knowledge that Mr. Dickey, of Harness, Dickey and Pierce—had something to do with the Huck business——

A. (Interposing) Yes.

Q. (Continuing)—patent business?

A. Yes.

Q. Now, is your recollection clear that at the time that the indictment was returned by the Grand Jury in this case at bar, which we are engaged in trying at the present time, the copy of the indictment was sent to you?

A. It was, yes.

Q. Had you requested it?

A. I had not.

Q. Was it explained to you, because of your great interest in this matter, they were sending you a copy of the indictment?

A. I don't recall the wording of the letter which was received with the copy of the indictment.

Q. Yes. Now, after the return of the indictment in this case, and after receipt of a copy of the indictment, you wrote a letter to Mr. Lipson, did you not?

[fol. 638] A. I don't specifically recall. Perhaps I did.

Q. Yes. And prior to writing that letter, you had some thought as to what your position would be as a Government witness in the event you were called by the Government in a criminal prosecution, such as we have here?

A. Very probably.

Q. Yes. And you started to think how you could show that you were not prejudiced against Huck; isn't that true?

A. I don't believe I had such concern. I may have.

Q. You may have?

A. Yes.

(Whereupon, a photostatic copy of a letter, dated October 27, 1961, was marked as Defendants' Exhibit X, for identification, by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you Defendants' proposed Exhibit X, and ask you, to your knowledge, is this a photostat of a carbon copy of an original letter that you signed?

A. That is correct, yes.

Mr. Haggerty: I hand to Government counsel for examination Defendants' proposed Exhibit X.

Mr. Lipson: I have examined the document.

Mr. Haggerty: May it please the Court, I offer in evidence Defendants' Exhibit X.

Mr. Lipson: No objection from the Government.

The Court: It may be received.

[fol. 639] Q. (By Mr. Haggerty, continuing) Reading it, it's a letter dated October 27, 1961, addressed to (Reading):

"Mr. J. L. Lipson
"U. S. Department of Justice
"Anti-Trust Division
"Washington 25, D.C.

"Dear Mr. Lipson:

"I have just read the indictment and civil complaint on the Huck matter, and it appears as though the

Grand Jury arrived at a reasonable decision. My congratulations to you and to those who assisted you in the preparation and presentation of the facts to the Grand Jury.

"In contemplating possible defense, if I am called upon to testify for the plaintiff, there could be likelihood of defense trying to show malice or prejudice in an attempt to discount any testimony I may be called upon to give."

Now, doesn't that refresh your recollection that on or about October 27, '61, you were thinking along the line of your status as a witness, having been active in filing the original complaint and furnishing the information to the Government? Didn't you question as to what your status as a witness would be?

A. Yes.

[fol. 640] Q. (Continuing and reading):

"In preparation you might keep in mind that it can be proved to the contrary, * * *"

And you offer 1, 2, and 3,

(Continuing reading):

"Recently, I testified freely as a friendly witness for Huck in a patent interference case with Olympic (see enclosed letter copies)."

That was testimony that you gave on an invention which was patented while you were at Huck?

A. For which an application was filed when I was with Huck, yes.

Q. Yes, yes.

A. Yes.

Q. And it was your original design?

A. That is correct, yes.

Q. Yes. And while you were at Huck and as an employee of Huck, all designs or all creations, inventions that you made, were the property of Huck; is that true?

A. That is correct, yes.

Q. As your employer?

A. Yes.

Q. Yes. And you testified in that case in behalf of Huck?

A. Yes.

Q. Based upon information and knowledge that you had obtained during the time that you were employed at Huck?

[fol. 641] . A. Yes.

Q. (Reading, continuing):

> "2. Where Brown-Line has had application for blind rivets or lockbolts or driving tool parts, I have personally insured that Huck parts were called out and procured from Huck despite the fact that in each case competitive devices were available and despite the fact that Huck has had in effect a policy of selling parts to Brown-Line only after the end use were clearly made known to Huck and Mr. Armour personally approved Huck's acceptance of Brown-Line orders on an individual basis. Procurement records are available here covering about four years procurement.
>
> "3. I have given Huck a full twenty per cent distributor discount on Brown-Line collar Splitters and spare parts purchased by Huck for resale purposes, shipping parts usually immediately and on open credit, despite Huck's refusal to negotiate a distributorship agreement."

A. Yes.

Q. Now, you wrote that letter to Mr. Lipson in mind, as you said, that it was thought by you there would be an [fols. 642-644] attempt to show your interest and motive and prejudice as a witness.

A. That is correct, yes.

Q. And you gave the suggestions to Mr. Lipson to counteract any such attempt being made?

A. That is correct.

(Whereupon, a communication was marked as Defendants' Exhibit No. Y, for identification, by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you, marked Defendants' Exhibit Y, for identification, and ask that you read it to refresh your recollection.

A. (Witness complies.)

Q. Have you read it?

A. I have, yes.

Q. Is it a copy of a copy of an original letter which you—or interdepartmental correspondence which you signed your name?

A. Yes.

. . . . . .

[fol. 645] ROBERT LOOKER, thereupon resumed the stand as a witness in behalf of the Government, and having been previously duly sworn to tell the truth, the whole truth, and nothing but the truth, testified further as follows:

Cross-examination. (Continued)

By Mr. Haggerty:

Q. Witness, I hand you, marked for identification Defendants' Exhibit Y, and I think that you have looked at it. This is a copy. And you did state, am I not correct, that this is a copy of an original of the letter which you signed?

A. Yes.

Mr. Haggerty: And Government counsel has had an opportunity to examine it, I believe, before recess.

Mr. Lipson: Yes, we have.

Mr. Haggerty: At this time, may it please the Court, I tender in evidence, Defendants' Exhibit Y.

Mr. Lipson: No objection, your Honor.

[fol. 646] The Court: It may be received.

Mr. Haggerty: May it be read to the jury, your Honor?

The Court: Yes.

Q. (By Mr. Haggerty, continuing) A letter on the stationery of the Huck Manufacturing Company, Departmental Correspondence, dated August 11, 1955, the subject is License.

(Reading):

It is to A. W. Armour, Copies to Benkert and Mathews, from R. Looker. Also there is written in longhand, underneath, Sterritt, and also in red, the word file, (spelling) f-i-l-e.

"As you know, George Mathews has just returned from a trip to Rockford, Illinois, where he called upon the Camcar Manufacturing Company in connection with our developing a good suitable second source for collar fabrication.

"Ray Carlson, their vice president, was a good friend of Lou Huck's, and I know that Mr. Huck always spoke very highly of Carlson. He made it known to George that he is very interested in any possibility which might exist insofar as the development of a CKL License might be concerned * * *"

What is a CKL License? What does a CKL License stand for?

[fol. 647] A. CKL refers to a blind rivet known as the Conical Keystone Lock Blind Rivet.

Q. (Continuing reading):

"* * * and I believe that in the Camcar Manufacturing Company we might have the combination of factors pointing a good licensee for the CKL Rivet. I realize that they are a comparatively small manufacturer in comparison to some of the larger people such as Elastic Stop Nut and Lamson & Session, but they are very highly thought of in the aircraft industry and have in operation a good aircraft sales force. In addition, they are thought of to be very high quality manufacturers and have a great deal of know-how which would be of invaluable aid to anyone who starts out with the Conical Keystone Rivet. With this in mind, I would like to suggest that possibly you and I travel to Rockford to examine their facilities and learn something about their company's operation with the possible thought in mind that they would be considered to be a suitable licensee for the CKL Rivet.

"I believe that we should also devote some thought to the consideration of Lamson & Sessions for a Lock-

[fol. 648] bolt License which would be limited specifically to a lockbolt suitable for structural attachment on heavy building structures.

"As you know, the so-called high tensile bolt is making very remarkable advances in replacing solid rivets for building construction and I believe that we can safely say that a lockbolt would be far preferable to the highly torque high tensile bolts which are now being used in very great tonnage for building construction.

"Although we may not be at liberty to grant such a license at this time, we will be in a little over a year from now and it would take at least that long to get suitable fasteners and tools developed for this market which could be handled by the Lamson & Sessions Company.

"Steel lockbolts of 5/8" and 3/4" diameter would be most generally used to replace the comparable diameter high tensile bolt and possibly this market would also demand a 1" diameter Huckbolt and maybe even up to 1 and 1/2" diameter.

"These suggestions are made with the thought in mind that our seventeen year lockbolt patent should be utilized as freely as prudent so that our total income from the patent can be a major factor in our business [fol. 649] without helping to cause any machinery which we own to sit idle. Considering Lamson & Sessions as a licensee for a high tensile Huckbolt to take the place of high tensile bolts in building construction work, would we believe, serve this purpose, and they are, I believe quite anxious to enter into the market.

"Very sincerely yours, R. Looker."

(Whereupon, a print was marked as Defendants' Exhibit Z, for identification, by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you for your examination and inspection Defendants' proposed Exhibit Z, and ask that you examine it. Have you ever seen it before?

A. Yes, I have.

(Whereupon, a letter, dated October 19, 1954, was marked as Defendants' Exhibit AA, for identification, by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you defendants' proposed Exhibit, marked for purposes of identification as AA, and ask you if that bears your signature?

A. It does.

Mr. Haggerty: I hand to Government counsel for inspection Exhibits marked for identification Z and AA, re-
[fol. 650] spectively.

Mr. Lipson: We have examined them.

Mr. Haggerty: At this time, may it please the Court, I offer in evidence Defendants' Exhibit Z and AA.

Mr. Lipson: We have no objection to either Exhibit.

The Court: They both may be received.

Q. (By Mr. Haggerty, continuing) Referring to the Exhibit Z, witness—that's a little clumsy to handle—it bears the name of Sam Egnot (spelling), E-g-n-o-t, with the date 10-8-1954, does it not?

A. Yes, it does.

Q. Who is Sam Egnot?

A. He is a former employee of Huck Manufacturing Company.

Q. And is this drawing the product of Sam Egnot?

A. Yes.

Q. And I notice that as a witness there is the name—a witness, R. Looker, and the date is 10-18-54, right?

A. Yes.

Q. And beneath this is Frank—is the initial A, Frank A. Dobbe?

A. Yes.

Q. And the date, 10-18-54?

A. Yes.

Q. Now, isn't it a fact that that indicates that that draw-
[fol. 651] ing, as of that date, was signed by yourself, as a witness, and Frank A. Dobbe, as a witness, as a witness to the fact that it was presented to you by Egnot on that date?

A. Yes.

Q. And this device, which is on Defendants' Exhibit Z, is a lockbolt——

A. (Interposing) Yes.

Q. (Continuing) —of some kind?

A. Yes.

Q. Right?

A. Yes.

Q. Now, upon receipt of this drawing, you sent this lockbolt, or this drawing, rather, to Mr. Sterritt, the patent counsel for Huck Company, did you not?

A. Very likely.

Q. And Defendants' Exhibit AA is on the stationery of Huck Manufacturing Company, and it is dated October 18, 1954, addressed to John C. Sterritt, of Harness, Dickey, and Pierce.

(Reading):

"Dear John:

"Attached to this letter you will find a drawing made by a man in our Field Engineering Department, Mr. Sam Egnot, showing a possible Huckbolt variation which may have a very substantial commercial value and which should be considered to be held until we [fol. 652] see if it works. The substance of the invention is shown as follows:

"In much commercial work it is necessary to have a comparatively wide grip range . . ."

Now, what is a grip range on a lockbolt?

Would either of these lockbolts here (indicating) show what a grip range is?

A. It would tend to show it, yes.

Q. Well, let's take either one or both of them. Would you demonstrate what the grip lengths are on both of them? Can everybody see? I am in the way, I guess.

A. On this lockbolt, the grip is the material to be fastened together, represented by the length of the smooth, unrolled shank, plus, in the case of this flush headpart, the height of the head.

Now, a grip range is an acceptable variation from a—a normal or nominal amount that any one part can successfully be utilized for attachment purposes.

Q. And the portion of the grip range severed from the Huckbolt at the time it's set—at the time its set?

A. No.

Q. In other words, is any portion of that Huckbolt that you have in your hand taken off?

[fol. 653] A. Yes.

Q. After it's set?

A. A part is taken off.

Q. Now, which part is taken off? Would you show us?

A. Yes, the part from the deep groove where my finger points (indicating), to the top.

Q. And what would you call that? Would you call that a grip range?

A. No.

Q. What would you call that? What would you call that?

A. A pin tail.

Q. A pin tail.

(Reading, continuing):

"* * * it is not necessary to have a substantial portion of the Huckbolt shank bearing against the walls of the hole. We, therefore, can make a Huckbolt having only locking grooves with no pull grooves, no shank or very little shank, and no breakneck. Such a Huckbolt would have the advantage of having an unlimited grip range being installable if the pin were long enough to reach the jaws of the tool."

What do you mean by that? Would you like to demonstrate that with the lockbolt?

A. No, I don't believe I need it.

[fol. 654] Q. All right.

A. The lockbolt that Egnot had presented was of such nature that it did not have an unrolled, unthreaded shank portion which would normally be adjacent to the material to be attached together. It had a continuous section of grooves. It had, therefore, no physical limitation to the material thickness to be attached, with the exception that the part must be long enough to reach the jaws or motivating portion of the drive tool.

Q. (Reading, continuing):

"Egnot's drawing attached shows a device for cutting off the pin, after the fastener has been swaged you will note that the small collar labeled 'A' bears against the top of the collar at final swage, forcing the section

'B' against the pin. We know that if a piece of material is pulled in tension and there is substantial compression at a point the pin will break at that point because of interaction of forces there. The device shown is not necessarily one which will be the final answer for the forces could be transmitted to compression section 'B' either by the anvil bearing against the top of the collar or by the anvil forces available if the anvil touches the sheet through some mechanical link-[fol. 655] age to the compression section."

Now, let's refer to this drawing. Mr. Dickey, would you help me hold this, please? Let's see. We have got to move around here. You have a big court room, your Honor, but we are crowded.

At the top of the drawing is what; what does that depict? Can you see it from there?

A. Yes, yes, I can. A representation of the jaw section referred to.

Q. And where is the head of the rivet?

A. At the bottom.

Q. At the bottom of the drawing. Now, this portion that I'm indicating here, (indicating)—that runs from the top up to the—from the bottom up to the top of the drawing is what? Is that the lockbolt itself?

A. Lockbolt pin, yes.

Q. Lockbolt pin. And what is this; what do these edges around here (indicating) depict?

A. Those are grooves formed on the lockbolt pin.

Q. Yes. Now, what are these pink things, A and B, here (indicating)?

A. Those are—that's the tool section which was designed for cutting off the lockbolt pin at the top of the collar.

Q. In other words, the lockbolt pin would be cut off where [fol. 656] this tool was applied?

A. Yes.

Q. Yes. And where is the collar? Is the collar shown on here?

A. It is, yes.

Q. Where is the collar? Will you just step down a minute and indicate?

A. The collar is the shaded portion.

Q. The shaded portion in the middle, the wide portion; is that right?

A. Yes, it is.

Q. Now, what difference was this—what difference is there in this drawing—may I have one of those lockbolts, please—between this proposed lockbolt and the ordinary lockbolt such as displayed by Exhibit 5?

A. There's no shank portion and there is no breakneck portion and the grooves are uniform.

Q. You mean, on the drawing there is no shank portion?

A. Or if there is, there's a very short one. I see a short shank portion.

Q. All right. And the grooves are different?

A. Appear to be, yes.

Q. In other words, then, on a lockbolt there is one groove at which place it's supposed to break; isn't that true?

A. Yes.

Q. And that's not true here?

[fol. 657] A. That is correct.

Q. But in order to break off the tail—the pin tail, is that what it's called?

A. Yes.

Q. In order to break off the pin tail, then, this tool is applied and applies forces and is it twisted?

A. No.

Q. By compression, then, that would—it's supposed to break off, is that true?

A. Cut it off.

Q. Cut it off?

A. Yes.

Q. With a tool?

A. Yes.

Q. Yes. Now, this happened back in October, 1954?

A. Yes.

Q. Did you file a patent application on a commercial lockbolt wherein it was similar in appearance to the proposed lockbolt on the drawing?

A. Yes.

Q. And you filed a patent application and obtained a patent?

A. That is correct.

Q. Now, you filed an affidavit in your patent application, right?

A. Yes.

Q. And amongst the things that you swore to was that, as [fol. 658] far as you know, there was no prior art?

A. Yes.

Q. And by prior art, we mean what?

A. Teaching which would pre-empt the possibility of invention.

Q. You had, however—and when did you file that patent application, your best recollection?

A. Oh, somewhere around '57, '58.

Q. Yes. You had, however, seen the Egnot drawing back in October 18, 1954?

A. Yes.

Q. Now, it was that commercial lockbolt that you patented that you attempted to license to the Illinois Tool Company; isn't that right?

A. Yes.

Q. And, likewise, you attempted to license it to this British concern, Aviation something Limited?

A. Yes.

Q. What is its full name?

A. I believe it's Aviation Developments Limited.

Q. It is also true you attempted to license it to Huck, did you not?

A. Yes.

Q. And you had correspondence in reference to licensing it with Huck?

A. Yes.

[fol. 659] Q. And you sent Huck your drawings before the patent had been issued, did you not?

A. Yes.

Q. And Huck told you that they would not accept your drawings in confidence?

A. I believe they did, yes.

Q. Yes. And you wrote Huck by return mail or shortly thereafter and told them it wasn't meant to be in confidence; is that right?

A. I don't recall. I don't recall that, but it's very likely.

Q. Yes. Now, in your patent application, you swore that you were the sole and original inventor?

A. Yes.

Q. And you also swore that you hadn't received ideas from any other source by prior art or invention?

A. I assumed that to be correct. I don't remember what the wording of the document was that I signed.

Q. Now, when you disclosed your drawing to Huck, you received a letter, did you not, that—to the effect of the Egnot disclosure?

A. Yes.

(Whereupon, a letter date June 2, 1961, was marked as Defendants' Exhibit BB for identification by the reporter.)

Q. (By Mr. Haggerty, continuing). I hand you Defendants' proposed Exhibit BB and ask you if it bears your signature?

[fol. 660] A. It does.

Mr. Haggerty: I hand to counsel for examination Defendants proposed Exhibit BB.

Mr. Lipson: We have examined the document.

Mr. Haggerty: I offer in evidence, may it please the Court, Defendants' Exhibit BB.

Mr. Lipson: Be pleased to have it in evidence, your Honor.

The Court: It may be received.

Mr. Haggerty: That is the first time we note the Government is pleased, your Honor.

Q. (By Mr. Haggerty, continuing) On the stationery of Brown-Line Corporation to (reading):

"Mr. John Sterritt
"Harness, Dickey & Pierce • • •"

The Court: What is the date?

Q. (By Mr. Haggerty, continuing and reading):

"7-141 General Motors Building
"Detroit, Michigan."

It is dated June 2, 1961,

(Reading):

"Dear John:

"Recalling our conversation at dinner, I would like to check out the Egnot disclosure to see if it anticipated [fol. 661] our patent 2,978,946 (which incidentally is awaiting proofing). If it does, I would like to know it before we proceed with licensing and/or marketing plans.

"Incidentally, I have heard third hand that Huck has claimed to Butler that Looker's lockbolt comes within Huck's lockbolt claims.' This I don't get as nothing has been done to even develop the invention as yet, let alone market it.

"Perhaps you can't answer the Butler thing (although I wish you would) but the Egnot disclosure should be sent, or we will have to assume that Huck has changed its mind and have decided that they were in error, and that the Egnot disclosure does not anticipate our patent 2,978,946.

"My memory of the disclosure is a little hazy."

And by the disclosure, you mean, the drawing, the exhibit? Is that true?

A. Yes.

Q. (Reading, continuing):

"My memory of the disclosure is a little hazy. I recall the large drawing with different colors on it [fol. 662] and recall witnessing it. In fact, it was drawn at my request so that we would have a defendable disclosure in the event we wanted to file on it. Otherwise, my memory needs refreshment.

"Your help in settling this will be appreciated. If we have issued an invalid patent, we want the patent office to revoke it, and if we have a valid patent, we want to get the product going."

Did you ever get the product going?

A. No.

(Whereupon, a document was marked as Defendants' Exhibit CC, for identification, by the reporter.)

Q. (By Mr. Haggerty, continuing) I hand you Defendants' proposed Exhibit CC and ask you what it is?

A. Copy of a patent, 2,978,946.

Q. And is that the commercial lockbolt patent we are discussing?

A. It is, yes.

Q. And does it truly depict from the drawings on the first page the lockbolt, the commercial lockbolt on which you applied for a patent?

A. Drawings on the first four pages.

Q. The first four pages complete?

A. Yes.

Q. But on page one, the first two drawings, are the lock-
[fol. 663] bolts in appearance similar to these lockbolts (indicating), the Government Exhibits 5 and 4?

A. No.

Q. Well, they—the first two figures on this drawing, Defendants' Exhibit CC, are drawings of lockbolts without any encumbrances, without any tools applied, without them drawing any material together; isn't that true?

Mr. Lipson: Your Honor, if we are going to have testimony on the document, I would like to have it in evidence and have an opportunity of examining it.

Mr. Haggerty: Well, I want to establish it first.

The Court: Perhaps you better.

A. Would you repeat the question, please?

Q. (By Mr. Haggerty, continuing) Isn't it true that the first two figures on the first page of Defendants' Exhibit CC are the pictures of lockbolts without any tools applied thereto or without them showing the operation of the lockbolt?

A. They're pictures of lockbolt pins.

Q. Of lockbolt pins?

A. Yes.

Q. Yes.

A. Such as disclosed by the patent shown.

Mr. Haggerty: I hand to counsel for examination the Defendants' Exhibit, proposed Exhibit CC.

Mr. Lipson: May I ask at this time whether the entire—

[fol. 664] whether you propose to introduce the entire exhibit?

Mr. Haggerty: All I care about are the drawings. The other may be excluded, but they're attached together.

Mr. Lipson: Your Honor, the Government makes no claim in this case of being a patent lawyer, but we have an impression that the text material is an intrinsic part of the drawings.

Mr. Haggerty: All right, then, we offer—

Mr. Lipson: (Interposing) I prefer that it all go in together for the sake of completeness.

Mr. Haggerty: We will offer it all.

The Court: It may be received.

Mr. Haggerty: Then, may it please the court, may I at this time hand to the Jury for examination and inspection the exhibit Z and CC for comparison as to the drawing and the lockbolt pin?

The Court: You may.

Mr. Haggerty: Sorry to have to give you something so clumsy.

(Whereupon, Defendants' Exhibits Z and CC were given to the Jury for its inspection.)

Mr. Haggerty: May we wait until the Jury has inspected the document, your Honor?

The Court: All right.

[fol. 665] Do you have some additional exhibits that you are going to introduce following these?

Mr. Haggerty: No, your Honor.

The Court: This is it?

Mr. Haggerty: This is the end of my exhibits.

The Court: Just examine them, don't carry on a conversation about them.

Q. (By Mr. Haggerty, continuing) Do you recall of your own memory the dates of the indictment of the Grand Jury was returned in this case?

A. No.

Q. If it were suggested to you that it was in October, '62, would that refresh your recollection?

A. No.

Q. As a matter of fact, it was returned October the 24th—

Mr. Lipson: (Interposing) I object to that, your Honor. That is misleading. It was not returned——

Mr. Haggerty: (Interposing) Wait, wait. I haven't finished my question.

The Court: All right, let's here it.

Q. (By Mr. Haggerty, continuing) 1961, was it not?

A. I don't recall the date that the indictment in this case was returned.

Mr. Haggerty: All right, can we agree, Mr. Lipson, on the date?

[fol. 666] Mr. Lipson: I'm perfectly agreeable to that date, 1961.

Mr. Haggerty: Yes, October 24, 1961.

Mr. Lipson: Yes.

Q. (By Mr. Haggerty, continuing) Now, after the indictment was returned, you caused, or the Brown-Line caused to be instituted in the United States District Court for the Southern District of California a civil action against the Huck Manufacturing Company, a corporation, and the Townsend Company, a corporation; isn't that true?

A. Yes.

Q. And you had mentioned in your letter to Mr. Huck, where you set forth the four alternatives, in addition——

The Court: You do not mean Mr. Huck.

Q. (By Mr. Haggerty, continuing) I mean, to Mr. Armour—we'll leave the dead undisturbed, your Honor—Mr. Armour, you had given him four alternatives, one was you were going to contact the Anti-trust division, which you did; the second one of the other alternatives was that you were going to institute a suit for damages?

A. Yes.

Q. Now, this is the suit for damages that you instituted and you instituted it October the 31st, 1962, didn't you?

A. May I clarify my last answer? The second alternative presented to Mr. Armour that we would file suit for a declaratory judgment, not damages.

[fol. 667] Q. Did you, at any time, ask for damages? Did you mention damages for declaratory judgement in damages in that letter?

A. I may have. I don't recall the wording of the paragraph.

Q. But you did, in this suit that was instituted October the 31st, '62, ask for damages, did you not?

A. Yes.

Q. And you had asked for damages in the amount of $1,200,000 didn't you?

A. Yes.

Q. Now, that suit is pending in the Southern District of California at the present time?

A. Yes.

Q. Now, is it a fact, witness, that the institution of this suit is the completion of what you started out to do—namely, to be in a position to sue Huck and possibly Townsend for a large sum of money with the hopes of recovering it?

A. No.

Q. Isn't it a fact that you hoped to recover $1,200,000 worth of damages in this suit?

A. Yes.

Q. That you have pending?

A. Yes.

Q. Yes, you do hope to recover that?

A. Yes.

[fol. 668] Q. And you hope to recover that as a reward for the service that you have rendered in this matter, and the work that you have had with it?

A. No.

Q. If you thought that you had a cause of action prior to October the 24th, 1961, why didn't you then instruct your attorneys to bring a civil suit for damages?

A. A very good reason. We couldn't afford it.

Q. You couldn't afford it?

A. No.

Q. Now, at the—has the stock of Brown-Line increased and enhanced in value and have their profits increased, whereby they can now afford a case?

A. We feel now that we can afford a low-cost case, so to speak, if we have a prima facie case.

Q. I see. It is your thought that the Government has done some work which you will take advantage of; is that right?

A. It is our consideration that we will—or have sued for damages as permitted by law.

Q. In other words, if the verdict of the jury in this case against Huck and against Townsend was found to be guilty as charged, you would, then, in your civil case, where you ask a million, two hundred thousand dollars' damages, have a prima facie case against Huck and Townsend? That's your attitude?

[fol. 669] A. That's not my understanding. My understanding is that the civil judgment reads on treble damages, but the criminal judgment does not.

Q. But you would have a prima facie case; is that it?

A. If the civil case goes against the Company, the Huck Company, I understand that, and Townsend, yes, but not in this case. Now, this is my understanding of the law and I am not competent to —

Q. (Interposing). However, it is your—within your knowledge that the proofs in the civil case would be similar to the proofs in this case; isn't that true?

A. This would be an assumption on my part.

Q. Well, what is your assumption?

A. My assumption that the cases are similar, yes.

Q. Yes.

A. But I don't know the point of law relative to either one.

Q. So if the Government would establish in this civil case its claim and win a favorable decision, then, as far as your personal or the Brown-Line case in Southern California in the District Court is concerned, you would have a prima facie case—

A. (Interposing) Yes.

Q. (Continuing)—is that right?

A. Yes, it is.

Mr. Haggerty: No further questions.

[fol. 670] The Court: Mr. Pomeroy?

Mr. Pomeroy: I have relatively few questions, your Honor, of a supplementary nature, shall we say.

The Court: This would be a good time to take a recess.

(Whereupon, a short recess was taken.)

[fol. 671] AFTER RECESS

ROBERT LOOKER, a witness called on behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further upon his oath, as follows:

Cross-examination.

By Mr. Pomeroy:

Q. Mr. Looker, I would like to ask you a few questions, going back to the beginning of your testimony, just to fill in a few blank spots of my memory, or notes.

How old were you when you were first employed by the Huck Manufacturing Company?

A. Twenty-five.

Q. That was in 1947?

A. Yes.

Q. And you left their employment in 1956, or nine years later?

A. Yes.

Q. So that that made you thirty-four when you left the employment of Huck, is that right?

A. Yes.

Q. Do I understand correctly that you immediately thereafter became president of the Brown-Line Corporation?

[fol. 672] A. Yes.

Q. And that you are still president of Brown-Line Corporation?

A. Yes.

Q. And am I also correct in understanding that you have an ownership in that company; own stock in it?

A. Yes, I do.

Q. And I believe you also mentioned a Mr. Miner as being another officer and owner of Brown-Line Corporation, is that right?

A. Yes, it is.

Q. And Mr. Miner, was, I believe, formerly a Huck employee also, is that true?

A. I think more accurately a Huck contract agent.

Q. A Huck contract agent?

A. Yes.

Q. What was his title?

A. He was—He was the president of Miner and Associates, Incorporated, which company represented the Huck Company by contract.

Q. Where did they represent the Huck Company?

A. In the western states of this country, in a sales capacity. He had *have* a title as west coast district manager.

Q. He had a title with the Huck organization?

A. Yes, I believe that is correct.

Q. Are you saying he was not on their salary payroll, however?

A. Yes, I am saying that. He was not considered a Huck [fol. 673] employee; he was considered a Huck contract agent.

Q. When did he cease being a contract agent for Huck?

A. As I understand it, sometime in the spring of 1957.

Q. Some months after you left Huck's employment?

A. Yes.

Q. What is his title with the Brown-Line Company?

A. Vice president.

Q. And was he an officer from the—excuse me—an officer from the beginning of the operations of Brown-Line?

Well, put it another way: was he an officer the same time that you became an officer of the Brown-Line?

A. I am not sure of that. I don't know.

Q. In other words, you are saying that he may have been an officer before you became associated with Brown-Line?

A. No. I am—I don't mean that. I believe that possibly he became an officer after he left Huck.

Q. I see.

A. That is my present recollection, although it may not be very accurate.

Q. Did he have an ownership interest in Brown-Line before he left Huck?

A. Yes, he did.

Q. Did have *have* an ownership interest in Brown-Line at the time that you left Huck to become president of Brown-Line?

[fol. 674] A. Yes, he did.

Q. Mr. Looker, you have testified the first morning, I believe, that you had prepared these exhibits—these sketches, Exhibits 6, 7 and 8, in response to the subpoena?

A. Yes.

Q. Served on you in this case. And you also testified, I believe, that you had prepared them on the day before the trial commenced?

A. Yes.

Q. That would be on Monday, a week ago?

A. Monday, the 25th, yes.

Q. Yes.

A. That is one date I am sure of.

Q. When was this subpoena served on you, Mr. Looker?

A. I don't recall. It was some weeks prior to that date.

Q. And did it instruct you to prepare these drawings, is that what I understood?

A. Yes, it did, and present them and have them available for presentation in court.

Q. The subpoena spoke in terms of drawings that were not then in existence, but what you were then to prepare, is that right?

A. My understanding of it, yes.

Q. Did the subpoena also ask you to bring in the lockbolts which are in evidence, Exhibits 4 and 5?

[fol. 675] A. Yes, they did.

Q. And 6 and 7?

A. I don't know the numbers on them. The two that are on the table are the ones that I delivered in response to the subpoena.

Q. These two which I am now holding are Exhibits 4 and 5?

A. Yes.

Q. These were produced in response to the subpoena?

A. Yes.

Q. And what about the ones that show the material?

A. I didn't bring those.

Q. To be joined together?

A. I didn't bring those with me.

Q. Six and Seven, you did not bring these with you?

A. No.

Q. Where did Exhibits 4 and 5 come from, in other words, two lockbolts?

A. The upper righthand drawer of my desk.

Q. Are they Huck Lockbolts?

A. I assume so, yes.

Q. When did Huck first start to produce this product? I think you testified to that.

A. I believe in 1947.

Q. And am I also correct in my recollection that Mr. Lou Huck, your stepfather was the inventor of this product?

[fol. 676] A. Yes.

Q. And he is the one that procured the patents covering lockbolts, is that right?

A. Yes.

Q. Do you remember when those patents issued?

A. No.

Q. Does 1950 sound like a good year for that?

A. It might have been.

Q. You have no independent recollection?

A. I do not, no.

Q. I think you have already testified that the life of the patent, under the United States Patent laws is seventeen years?

A. Yes.

Q. Do you remember when the patents on those lockbolts was to expire?

A. My recollection in the matter is that there are four patents involved. One, I believe, had expired, although I am not sure of that. Two, to the best of my recollection issued sometime in 1951, perhaps; within a year either way, and that one issued sometime in 1955, plus or minus a year.

Q. So that of the several patents involved they were not all issued at the exact same time, would you say?

A. That's correct, yes.

[fol. 677] Q. And would have different expiration dates?

A. Yes.

Q. It is true, is it not that during the lives of the patents, or the life of any patent, the patentee, the patent owner has what is called a patent monopoly to manufacture, use and sell the product covered by the license by the patent?

A. That is my understanding and conclusion. I really am not competent to answer the question.

Q. You were in charge of the patent affairs of the Huck Manufacturing company after Mr. Huck died, were you not?

A. Yes, I was.

Q. This patent monopoly I referred to, would be true, would it not as long as no other licenses were granted under the patent?

A. My understanding of what constitutes the legal definition of a patent monopoly is just not competent, sir.

Q. Isn't this true, Mr. Looker, that when these patents were issued to the Huck Manufacturing Company, and assuming that it licensed no one thereunder for any purpose, that it exclusively had the right to make, use and sell those products?

A. That is my understanding of the law, yes.

Q. And that as soon as it licensed anyone, either to make or use or to sell, or any combination of these, it then was not the exclusive—it had given up some of the exclusive rights that it previously enjoyed?

[fol. 678] A. Yes.

Q. Isn't that so?

A. Yes.

Q. Now during the period from the issuance of these patents, whatever the dates—let's assume 1950 might be a date for one or more of them, and until the license to Townsend in this case in 1954, had there been any other licenses issued by Huck relative to lockbolts?

A. I lost the question somewhere, could we have it repeated, please, sir?

Mr. Pomeroy: Would you read it back, please.

(Whereupon the pending question was repeated by the Reporter.)

A. Not to my knowledge.

Q. (By Mr. Pomeroy) You would know if there had been, wouldn't you?

A. I would assume that, yes.

Q. As a matter of fact, Huck had been reluctant to issue any licenses during this period, had it not?

A. Some extent, possibly. The incident previously testified to, in 1951, I believe, where we did discuss this matter with the Townsend Company, Huck exhibited its reluctance to negotiate after—only after the Townsend Company didn't indicate a particular willingness to negotiate on favorable terms to Huck. It was somewhat reluctant, I be-

[fol. 679] lieve to issue a patent license before that date, however.

Q. As a matter of fact you testified earlier, did you not, that were Huck to grant a license to Townsend, as Townsend requested, or anyone else, for that matter, this would

involved the losing of some of Huck's customers in all likelihood?

A. Yes.

Q. Or at least some of the business that various of the customers had previously directed solely towards Huck?

A. Yes.

Q. Speaking of customers, Mr. Looker, you mentioned a few of the more prominent ones in your direct testimony, among them was the Republic Aviation Company, I believe?

A. Yes.

Q. Are you able to state whether Republic Aviation Company continued as a customer of lockbolts?

A. I am not able to say.

Q. Do you know whether they did or did not continue as a customer?

A. I don't know whether they did or not, no. I do know we had them well sold at one time.

Q. You don't recall if they got unsold?

A. They may have.

Q. In 1955 and '6?

A. They may have.

Q. You don't remember that?

[fol. 680] A. I don't recall that, no.

Q. Would you say that they were customers of Huck's when you left the employment of Huck?

A. I don't know whether they were or not.

Q. Well you did classify them as a prominent customer, didn't you?

A. At one time they did buy a good many lockbolts. Now whether they continued to buy them, I don't know. I do know that we had a very difficult time establishing them as a customer, and it is one that stuck in my memory for that reason, because I worked on it personally.

Q. But you don't remember that they did not become—did not remain a customer?

A. I don't recall that.

Q. What about the North American Aircraft Company, Mr. Looker, was it a customer of lockbolts; of Huck for lockbolts?

A. I don't believe so, no. No.

Q. To your knowledge, has North American ever used lockbolts in the manufacture of its aircraft?

A. I think they used a few, but I am not real sure of that. They used a few blind lockbolts, but I don't know that—if they used any lockbolts it was very few, during my period of employment.

Q. Right. You mentioned in direct testimony the—as one reason for the grant of the license to Townsend by [fol. 681] Huck, the demand for a second source of lockbolts?

A. Yes.

Q. And you mentioned that Douglas Aircraft Company particularly had made such a request for a demand upon Huck?

A. Yes.

Q. Douglas was one of Huck's prominent customers, was it not?

A. Yes, it was.

Q. Did such a demand come from any other aircraft manufacturer?

A. I don't believe so, no.

Q. Just from the Douglas Company?

A. That's the only one I recall.

Q. You wouldn't say that it was the only one, necessarily, would you.

A. No, I would not.

Q. Would you tell us again, Mr. Looker, if you did tell us once, what a second source means or meant to you in 1954, when this request was made?

A. Means that there are two independent companies producing a like product, giving the purchaser the option of buying from either one or the other.

Q. You say a "like product." By that do you mean an identical product?

A. Substitutible product doesn't have to be completely identical if one can be substituted freely for the other.

Q. As a matter of fact, wouldn't they have to be identical [fol. 682] to all intents and purposes if they were to be freely substitutible; completely substitutible?

A. Yes, sir. There could be minor differences. I don't want to belabor the point, it isn't particularly important, I don't think. I know that exactly like products are more easily substitutible, however, there are many aircraft bolts which are freely substituted one for the other and they are not exactly alike.

Q. But this request—this particular request for a second source of lockbolts in effect meant we want someone else besides Huck to make lockbolts?

A. Yes.

Q. Did it not?

A. Yes.

Q. And lockbolts was a specific and peculiar and identifiable product, isn't that correct?

A. Correct.

Q. The purpose, as I believe you mentioned, was to make sure that the same product could be readily available to a manufacturer in the event of something happening to the Huck Company, which would prevent its supplying the demand?

A. That was one of the purposes, yes.

Q. Yes. You mentioned at some point in your testimony about this subject, Mr. Looker, that this was a highly competitive market?

[fol. 683] A. That—Excuse me. What was a highly competitive market?

Q. That's what I was going to ask you. Did you mean the fastening industry?

A. I don't know what the question refers to.

Q. Relative to aircraft?

A. I don't know what the questions refers to, sir.

The Court: In your testimony on direct you—In direct testimony you said it was a highly competitive industry. Now I think counsel wants you to explain why it was competitive.

A. What was a highly competitive industry?

The Court: Lockbolts.

Mr. Lipson: Your Honor, if we could have the context of that statement, it might help to narrow the area we are inquiring into.

Q. (By Mr. Pomeroy) Mr. Looker, you were directing your remarks particularly to the labor situation at the time—this appears on page 513 of the record, and there you stated in answer to a question by Mr. Haggerty: "The existence of a second source for fabrication of lockbolts at the time appeared to me to be a deterrent to the strong position which the unions held in that did such a strike

occur, the customers of the company would have someplace else to go and therefore the company might stand the chance of losing those customers, while with a single source, the [fol. 684] customers had no other place "to go. * *

"In a highly competitive market, my opinion at that time, as I recall, was that unions do not have such a strong position in negotiating because of the threat of loss of business of the company and employment in their ranks."

Now what did you mean by the phrase highly competitive market, that was my question?

A. I was referring to any industry which is highly competitive; under those circumstances the unions do not enjoy that power on sole source products. I wasn't referring to any specific industry at that time.

Q. You were not referring to any specific industry at all?

A. No.

Q. You weren't referring to the metal fastener industry as applied to the manufacture of airplanes, for example?

A. I was drawing an analogy only and I was not referring to any specific industry. I was drawing an analogy to the fastener industry.

Q. Were you not referring to the anticipated relationship of Huck Manufacturing Company and Townsend Company as a result of the giving of this license?

A. Yes, I was. But the competitive industry I was referring to was only an analogy, that the establishment of a second source would tend to make it more competitive, therefore, with the analogy, and that the position of labor [fol. 685] negotiations would therefore be alleviated.

Q. What is the—What was the industry that you were referring to?

A. The competitive industry?

Q. Yes.

A. I had no specific industry in mind.

Q. You had no industry in mind?

A. No.

Q. Were you—You might have been referring to the fastener industry, might you not?

A. When I made the statement, I had no specific industry in mind. I was merely drawing an analogy, sir.

Q. Right. But you could have been referring, as I say, to the fastener industry, could you not?

A. If the fastener industry or that segment of it, that the reference was made is a highly—is or was a highly competitive industry, the solid rivet business is a highly competitive industry, and the analogy could have been made to that portion—facet of the industry, yes.

Q. The lockbolts as then manufactured by Huck Manufacturing Company compete with any other fasteners?

A. Yes, and no.

Q. That is a good lawyer-like answer, Mr. Looker.

A. I can't answer it any other way. I have been asked that question several times, and there is just no other answer.

Q. Well now, you did ultimately—"you", meaning Huck Manufacturing.

[fol. 686] Q. Well, now, you did ultimately—"you", I mean Huck Manufacturing Company ultimately concluded a license with Townsend—certain parts of this has been read by you into the record heretofore, but only those bits and pieces of it. I would like you to refer to Exhibit 17, if you will, so that I can ask you a few supplementary questions.

You have read paragraph one of Exhibit 17, which is the granting clause, whereby Huck grants to Townsend a non-exclusive license to make, use and sell lockbolts.

Paragraph two refers to the consideration or money which Townsend should pay for this privilege, does it not?

A. Yes, it does.

Q. Would you read paragraph two, please?

A. Yes. Paragraph Two.

> (Reading): "Townsend agrees to pay to Huck a royalty of five per cent on the net selling price of all lockbolt devices manufactured and sold by Townsend which are covered by any claim of any of the letters patent licensed herein. By net selling price the parties hereto mean the net selling price of lockbolt devices charged by Townsend, less all discounts allowed and taken."

Q. That is the so-called royalty clause, is it not?

A. Yes.

[fol. 687] Q. Now, paragraph three, without reading, but you can check me, provides that Townsend must keep proper books of account relative to its sales and make monthly reports to Huck relative thereto, does it not?

A. Yes, it does.

Q. Paragraph four requires Townsend to make payments of five per cent royalty each quarter, does it not?

A. Yes.

Q. Paragraph five permits Huck to have access to the books and records of Townsend in order to check the amounts of lock-bolt sales made by Townsend from time to time, does it not?

A. Yes, it does.

Q. Then, paragraph six gives Huck a right to cancel on sixty days' notice if Townsend defaults in any of these royalty and payment provisions, is that correct?

A. Yes.

Q. Paragraph seven also deals with royalties, and provides that commencing the second year of the agreement there should be a royalty of at least fifteen thousand dollars and thereafter an annual royalty of at least twenty-five thousand dollars, is that correct?

A. Yes, it is.

Q. Now, you read paragraph eight previously, which is Townsend granting to Huck an improvement license.

Paragraph nine, Townsend agrees to use its best [fol. 688] efforts to provide the required facilities and to manufacture and sell said lockbolt devices in sizes up to, at least, 9/16" pin diameter. Is that a correct reading of that paragraph?

A. Yes.

Q. Now, 9/16" pin diameter means the diameter of the pin tail and the shank of the lockbolt?

A. Yes.

Q. 9/16" is just over a half an inch, isn't it? 1/16" over a half inch?

A. Yes.

Q. Now, would you read paragraph ten, please, Mr. Looker?

A. Yes. Paragraph ten.

(Reading): "For lockbolt devices sold by Townsend as Huck equals with pin diameter up to 3/8", Townsend

agrees to maintain Huck's quality for full equivalence in shear, tension and fatigue, for aircraft shear in tension allowables as defined or as may be defined by ANC Size Manual and for commercial lockbolt devices typical strength properties defined in Huck-published commercial lockbolt engineering bulletins, which Huck agrees to supply to Townsend."

The Court: That is bulletins, that "which", is [fol. 689] that what it means?

A. Bulletins, yes.

The Court: Supply bulletins.

Q. (By Mr. Pomeroy) Now, Mr. Looker, this is rather technical language, at least to me. What does it mean when it—to you, when the agreement says Townsend shall maintain Huck's quality for full equivalence in shear (spelling), s-h-e-a-r?

A. That the shear strength will be equal.

Q. What is shear strength?

A. Shear strength is the strength of the fastener in a plane tending to cut it apart perpendicular to the center line.

Q. Would it help if you had one of these lockbolts in your hand to indicate the shear force?

A. Referring to the unthreaded smooth shank portion, the shear force would be a force which would tend to cut it in half in the plane perpendicular to the axis, with the part (indicating).

Q. In other words, to a layman, it is shearing?

A. Yes.

The Court: Snip it off.

A. That's pretty simple.

The Court: Is that right?

A. That is correct.

Q. (By Mr. Pomeroy) What is—the next word is "ten-[fol. 690] sion." Townsend will maintain Huck's quality for full equivalence in tension, what does that mean?

A. The tension forces would be applied in line with the center line of the part tending to pull the collar off the part

or tending to pull the part apart by failing in tension. I can't think of another word.

Q. That means, a stress or a force exerted longitudinally, with the lockbolt?

A. Yes.

Q. What is full equivalence in fatigue, what does that mean?

A. That refers to the ability of the part to withstand the repetitive tension stresses.

Q. Fatigue, in other words, for getting tired?

A. Yes.

Q. In other words, fatigue as applied here, I take it, means its durability or expected length of life when stresses and strains are exerted upon it, is that one way of putting it, or not?

A. Yes, that would be a fairly accurate way of putting it, yes, sir.

Q. Then, this goes on to say for aircraft shear and tension allowables as defined or as may be defined by ANC 5 Manual, what does that mean? What is the ANC 5 Manual?

A. That is a Government publication on the strength of aircraft elements, I believe it is the title. It is published by [fol. 691] a committee of the Department of Commerce, and shows the strength of—the allowable strengths for aluminum, steel, tubing, rivets, and there was a chapter on lockbolts at this time.

Q. Have you seen this manual?

A. I have, yes.

Q. Is it a book, or what is it?

A. Oh, it's—yes, it is. Resembles an eight and a half by eleven book about three eighths of an inch thick, with a paper cover.

Q. And in here where the—were the Government specifications for these qualities, that is to say, shear strength, tension strength, and fatigue, as applied to, amongst other things, lockbolts?

A. I don't believe there was anything in the ANC 5 Manual on fatigue. The ANC 5 Manual did list the shear and tension allowables, so to speak, of the product, but I don't believe fatigue was mentioned.

Q. That had to do with aircraft lockbolts. The paragraph you read goes on and says:

"And for commercial lockbolt devices typical strength properties defined in Huck-published commercial lockbolt engineering bulletins."

Were there such commercial lockbolt engineering bulletins——

A. (Interposing) Yes.

[fol. 692] Q. (Continuing—which Huck published?

A. Yes.

Q. And what were they, specifications for the commercial type lockbolts?

A. Yes, specifications governing the product, its installation, its strength characteristics and the like.

Q. And Huck agreed to supply these to Townsend, did it not?

A. Yes.

Q. This paragraph ten, Mr. Looker, that we have been discussing was designed, was it not, to make the Townsend lockbolts the ones that they would manufacture, the full equivalent in terms of quality——

A. (Interposing) Yes.

Q. (Continuing)—size, all the other attributes of them, to those already manufactured by Huck?

A. I believe the intent was the full—excuse me.

Q. And defined in the ANC Manual and in the Huck Bulletins, is that correct?

A. I believe the—yes, except that I think there is another paragraph on quality.

Q. Well, there may be another one, but this one says "for lockbolt devices sold by Townsend as Huck equals"?

A. Yes.

Q. Up to 3/8", Townsend agrees to maintain Huck's quality for full equivalence?

[fol. 693] A. Yes.

Q. Meaning, I suppose, complete equality, does it not, full equivalence is completely equal?

A. Yes.

Q. In these characteristics?

A. Right.

Q. Isn't it true that the provisions of this paragraph ten

were necessary in order to really provide a second source for lockbolts?

A. Yes.

Q. If there was to be a second source, that would satisfy Douglas and any other aircraft manufacturer, in other words, this paragraph and Townsend's performance under it was an essential thing to provide?

A. Yes, that is correct.

Q. Turning to paragraph eleven, Mr. Looker, would you read that one?

A. (Reading):

> "Townsend—Paragraph 11.
>
> "Townsend agreed to suitably identify the lockbolt devices as manufactured and sold by it to distinguish from the lockbolt devices manufactured and sold by Huck, the manner of so distinguishing the lockbolt devices to be mutually determined hereinafter."

Q. This means there was to be some mark to identify a [fol. 694] Townsend made lockbolt from a Huck made lockbolt?

A. Yes.

Q. Was there such a distinguishing mark mutually determined?

A. Yes.

Q. What was it?

A. If my memory serves me properly, the Townsend lockbolt had a little letter "C" on the head of the pin.

Q. What did the Huck lockbolts have?

A. It didn't—there were various identifications, none of which truly indicated the fact that they were Huck, there were identification for material and identification which indicated whether or not the part had a close tolerance countersunk head, there were a whole series of them, and I know that on one was an "H". I think that was incidental, because they all didn't have "H"s on them.

Q. But, it was desired that their—that the ones that Townsend was to make could be capable of being distinguished from the Huck ones, is that right?

A. Yes.

Q. That is in case that there was some damage or defect in them, I suppose, and it could be traced that way?

A. Yes.

Q. When you say a "C" in the end of the pin, you mean the end of the pin tail?

A. I believe—no, it didn't want to be on the end of the pin [fol. 695] tail because that was discarded, it wants to be in the top of the head, on the end of the head.

Q. So the "C" would be in the head?

A. Yes.

Q. So it was stamped in "C"?

A. Something like that.

Q. Paragraph twelve. Mr. Looker, you have heretofore read paragraph a, which grants this—makes this license exclusive for two years.

And you read paragraph b, which provides for the same prices for two years. I think you have not had occasion to read the introductory part of that paragraph of the first eight lines, would you read those, please?

A. Yes.

Paragraph Twelve.

(Reading):

> "Recognizing that Huck has a considerable investment in facilities for the manufacture and sale of the licensed products and has, over the past years, spent considerable monies in the development and promotion of said products and, further recognizing that Townsend will be required to expend a considerable amount of money to provide the facilities required for its entering into the manufacture and sale of lockbolt devices herein licensed:"

[fol. 696] And then paragraphs a and b of that same paragraph twelve.

Q. Right. Thank you.

Now, referring to paragraph b which requires Townsend to maintain Huck's prices on lockbolt devices, line four thereof says that this shall be done according to Huck's published current price schedules as changed from time to time?

A. Yes.

Q. There were published price schedules, were there, at this time?

A. Yes. Yes, there were.

Q. And the next phrase says:

"And computed according to Huck's published standard pricing policy,"

what was that?

A. Oh, it was a document generally published in front of the price list which indicated the terms and conditions of any subsequent contract.

Q. Terms and conditions of what?

A. Of any subsequent contract emanating from the price list.

Q. You mean a contract of purchase and sale?

A. Yes.

Mr. Pomeroy: If the Court please, this particular document has not been produced by the Government and I asked [fol. 697] Mr. Lipson for it a little while ago.

It is J2241 and 42. He did not have the original available, so I am presenting a copy.

(Whereupon, a document was marked Defendants' Exhibit DD, for identification, by the reporter.)

Q. (By Mr. Pomeroy) Mr. Looker, I show you a paper which has been marked for identification, Defendant's Exhibit DD, consisting of three pages, and ask you if that is a copy of a pricing—of the Huck pricing statement, or contains such a standard pricing policy statement?

A. Yes, it is.

Q. The first page—excuse me. The first page is simply a memorandum from Martin C. Welch, dated August 23, 1954, to All Product Engineers of Huck, enclosing the attached two pages, is that correct?

A. Yes.

Q. And the attached two pages are headed respectively, "order pricing policy for commercial Huckbolts," and various kinds of rivets on the first page.

And on the second page "order pricing policy for aircraft Huckbolts, Huckbolt stumps, blind Huckbolts, and Huckbolt collars," is that correct?

A. Yes, it is.

Q. Do you remember this particular pricing policy as having been in effect in August, 1954?

[fol. 698] A. Not specifically, no. I assume it was from the memorandum attached.

Q. These pricing policies, Mr. Looker, meaning particularly Exhibit DD, cover various things, do they not, such as terms of shipment, method of producing, method of computing prices, exceptions to the normal pricing policy, quantities, packaging and split shipments?

A. Yes.

Q. So that under the license agreement it would be Townsend's obligation to follow this Exhibit DD, or any similar pricing policy statements that Huck could issue from time to time?

A. Yes.

Q. Is that your understanding?

A. That is correct, yes.

Q. Skipping down to—well, paragraph 13 of this agreement, Exhibit 17, Mr. Looker, provides that

> "Townsend may cancel this agreement at any time upon six (6) months' previous notice in writing to Huck.,"

Is that correct?

A. Yes.

Q. Paragraph fourteen states how notices by one party to the other shall be given, is that correct?

A. Yes.

Q. And fifteen, provides that it is a non-transferable li-
[fol. 699] cense, is that correct, without Huck's permission?

A. Yes.

Q. Sixteen provides that unless the license agreement has been previously terminated, it shall extend for the life of the patent covered, is that true?

A. Yes, it is.

Q. Paragraph seventeen, you have already read, it provides that Huck shall give Townsend the drawings and product specifications, etcetera, that are needed to get into production and that each party will give the other such know-how as they have in the manufacture of lockbolts, is that a fair summary?

A. Yes, it is.

Q. Paragraph eighteen, I think has not been read. Would you read that, please?

A. Yes. (reading):

"Paragraph 18. The license granted to Townsend in paragraph 1 hereof shall commence at the date of this agreement with respect to all lockbolt devices, except those manufactured for sale for use in aircraft, and such license for use in aircraft shall not begin for nine (9) months from the date hereof."

Q. Do you remember some discussion about this topic in the meeting that you have testified to when this license was negotiated?

[fol. 700] A. I remember some discussion, yes.

Q. Just answer yes or no.

A. Yes.

Q. Did Huck want Townsend to stay out of the aircraft business longer than nine months originally?

A. Yes.

Q. And did Townsend want to get in the aircraft business earlier than nine months originally?

A. Yes.

Q. Paragraph nineteen, Mr. Looker, provides for Townsend shall properly affix statutory patent notices to all of the containers wherein they sold lockbolts and in all Townsend advertising, indicating that these were covered by Huck patents, is that right?

A. Yes, it is.

Q. Paragraph twenty, which is the foot of page seven of Exhibit 17, will you read that paragraph, please?

A. Yes.

(Reading):

"The pendency of litigation on any patents that are or may be included in this agreement shall in no wise affect this agreement, but in the event that any claim or claim of such patents shall be held invalid by a court of last resort or by a lower court from which [fol. 701] no appeal or petition for writ of——"

The Court: (Interposing) Certiorari.

Q. (By Mr. Pomeroy) Certiorari. I think that is the way the lawyers pronounce that word.

A. Would you do it again?

Q. Once is enough. That's all right.

The Court: Certiorari.

A. (Reading):

"certiorari has been taken within the time permitted therefor, then Townsend after five years from such event or from the expiration of the time for appeal or writ of certiorari from said lower court and no appeal or writ having been taken, shall thereafter be relieved from any and all obligations to pay royalties for or on account of any fastening devices which are covered only by the claim or claims so held to be valid."

Q. Do you remember any discussion about that topic at the meeting which you mentioned in which the patent was negotiated, the license was negotiated?

A. May I read it over again, please?

Q. Yes, read it to yourself.

A. Yes. Yes.

Q. That is a clause which would exonerate or excuse the Townsend Company as licensee from paying royalties [fol. 702] to Huck if the Huck patents were declared invalid in some other litigation?

A. Yes.

Q. After five years had elapsed, is that right?

A. Yes, it is.

Q. Paragraph eleven of the agreement, Mr. Looker, refers to the possibility of a license—Huck granting a license in Canada and first offering it to Townsend if it decides to do so, is that right?

A. Yes.

Q. Paragraph twenty-two is the last paragraph which says that all provisions hereto are material to the contract and any breeches thereof shall be considered as material breeches, is that right?

A. Yes. The end of the paragraph.

Q. Mr. Looker, at the meeting which you just referred to, in which the patent license was negotiated, you mentioned in your direct testimony that Mr. Johnson was present as representing the Townsend Company, is that right?

A. Yes.

Q. Representing them as an attorney?

A. Yes.

Q. Or a lawyer? And Mr. Sterritt was present representing the Huck Manufacturing Company?

A. Yes.

[fol. 703] Q. Do you recall whether there came a time in that meeting when one of those lawyers accused the other of some language that he considered offensive?

A. Yes.

Q. What was that episode, if you recall?

A. At the time paragraph twenty was explained to the Townsend Company, the motive and intent of the Huck Company.

Q. What was the offensive language, and who said what to whom about it?

A. After——

Q. (Interposing) As you recall it?

A. (Continuing)—after Mr. Sterritt explained the intent of paragraph twenty to the Townsend Company, the Townsend People, Mr. Johnson said that it is a fine way to call a guy, an S.O.B., he didn't use the initials.

Q. Mr. Johnson said that of what? Concerning what Mr. Sterritt had previously said, is that right?

A. Yes. Yes.

Q. When did you first meet Mr. Johnson?

A. My first recollection of having met him is at that meeting.

Q. When did you first meet Mr. Dickenson, Mr. Looker?

A. During the meeting, previously testified, in Beaver Falls, I believe, in 1951. That's my earliest recollection.

Q. And when did you next meet Mr. Dickenson?

A. The next I recall is the meeting just referred to. [fol. 704] There may have been other meetings, but I don't recall them. They are not fresh in my memory.

Q. Then, between the date of the license, say the date of the meeting that you just referred to and the time of the termination of your employment at Huck, how many times did you see Mr. Dickensen, as you can recall?

A. I recall four specific times.

Q. In this period that you have just identified?

A. Between 1951, and 1956, yes.

Q. Well, you mentioned two?

A. Yes.

Q. You mentioned two. What was the next one?

A. There were five, rather, not four, but five; the two just mentioned, plus the meeting held in Beaver Falls that Mr. Mathews and I attended; testified to previously.

Q. That was what?

A. That's the third.

Q. That was what year, or month?

A. I just don't recall the month and year the next meeting was held.

Q. At the meeting which you mentioned some discussion concerning freight policy?

A. Freight equalization, yes. The next meeting was held —the next meeting I remember seeing Mr. Dickenson was the meeting at the Homestead in Virginia where I attended [fol. 705] a Townsend Company sales meeting.

And the fifth meeting was held in Santa Ana, California, a rather brief encounter, where I saw Mr. Dickenson.

Q. Is that while you were still employed by Huck?

A. Yes.

Q. When was that?

A. I may be mistaken, but I believe it is the time—this is Mr. Chilcoat—previously testified to. I may be mistaken, but I think, I believe that's it.

Q. And you met Mr. Dickenson at that time?

A. Yes.

Q. The Homestead meeting to which you just referred, did you identify the time of that?

A. I did not.

Q. Can you?

A. I cannot.

Q. Is that when you were giving a lecture; giving a lecture?

A. I did give a lecture.

Q. Give a lecture on lockbolts?

A. I gave a lecture on—that time and place—on lockbolt sales, yes.

Q. Lockbolts, and lockbolt sales?

A. Yes.

Mr. Pomeroy: Thank you very much. I will offer [fol. 706] in evidence Exhibit——

The Court: (Interposing) DD.

Mr. Pomeroy: (Continuing)—Double D.

The Court: Any objection?

Mr. Lipson: None.

The Court: It may be received. Any further cross examination?

Mr. Haggerty: No further cross examination.

Mr. Lipson: With the Court's permission, we have a short redirect examination of Mr. Looker. I hope it is a short redirect examination.

The Court: You should have said with the Court's prayer.

Mr. Lipson: I am sure we all join the Court on that.

Redirect examination.

By Mr. Lipson:

Q. Mr. Looker, on examination by counsel for Defendants Armour and Huck, you were asked on page 486 of the transcript, line 21: (Reading)

"Question: And your interest is, if possible, to see all of these defendants convicted; isn't that true?

[fol. 707] "Answer: No.

"Question: No? Isn't it within your line of interest that they should be convicted?

"Answer: Yes."

Mr. Looker, do you have any further explanation of what "no" and "yes" meant to that context?

Mr. Haggerty: Well, I object to it, may it please the Court. It is not proper redirect examination. I don't think it calls for an explanation. It is a direct question and a direct answer.

The Court: He may answer.

A. When I answered "no" I meant that I had no interest in seeing the defendants, Mr. Armour and Mr. Dickenson, convicted in this case. I do have some interest, or my company has some interest in the entire monopoly situation, and I do, therefore, have an interest in the case.

However, I bear no malice toward Mr. Armour or Mr. Dickenson in this case.

Mr. Haggerty: I object to that and ask that it be stricken. From the witness—from the record, that he bears no malice. I think that is an issue of fact for the jury.

The Court: It may stand.

Q. (By Mr. Lipson) Mr. Looker, in the cross examination [fol. 708] by Mr. Haggerty, on page 488 of the transcript, line 17, on that page, you are asked a question:

"Question: And you were in complete charge of sales; were you not?

"Answer: Yes."

Is that a complete answer, Mr. Looker?

A. Could you read the previous question, too?

The Court: 1954, I think.

A. In 1954. Prior to May, 1954, I was not. And, after May, 1954, I was charged with the responsibility of sales, yes.

Q. (By Mr. Lipson) Is that the complete answer to that question?

A. Well, by complete charge, I was responsible to the management of the company for the conduct of the sales activities of the company, and many of the things I did with express and explicit permission.

I did, however,—or was charged with the responsibility of exercising my own judgment in many of the matters that I had responsibilities for. I know of no other way to increase the testimony.

Q. If I may refer for the moment to Government's Exhibit 17,——

The Court. (Interposing) The witness has it.

Q. (By Mr. Lipson) You do. May I?

If you recall, Mr. Looker, on cross examination you were requested to indicate the binding time of some certain provisions in this agreement. The number of years that [fol. 709] certain provisions would be enforced and the questioning with respect to this appears on page 503 of the transcript, and I believe at that time you were questioned with respect to a and b of twelve.

I ask you to direct your attention to paragraph 8 of Government Exhibit 17.

Now, you have previously read paragraph eight. Would you summarize its contents, what it is about, just the title.

A. I don't know that I can easily summarize it.

Q. Well, with the Court's permission, then, would you read it over. It is a short paragraph.

A. Yes. (Reading):

> "Townsend hereby grants to Huck a non-exclusive royalty—free license, with the right to sublicense on any improvements on said lockbolt devices made or acquired by Townsend during the life of this agreement coming within the claims of the licensed patent or lockbolt devices of the same type which are substitutes for the lockbolt devices licensed herein by Huck."

Q. Now, examining the remainder of Government's Exhibit 17, is there any limitation on the period in which paragraph No. 8 would be in force?

[fol. 710] A. No. No, the life of the patent.

Q. Is that the only time limitation that you know?

Mr. Pomeroy: If the Court please, the agreement will speak for itself.

The Court: It does, but——

A. (Interposing) It is the only time limitation that I know of, yes.

Q. (By Mr. Lipson) Thank you.

Based on the testimony this morning, you apparently at one time made an offer to a firm known as Aviation Developments Limited with respect to a lockbolt device about which there was some testimony this morning. Do you recall that incident?

A. Yes, I do.

Q. Do you recall whether or not Aviation Developments Limited responded to you?

A. Yes, they did.

Q. Do you recall the nature of that response?

A. Yes.

Q. What was it?

A. It was a letter.

Q. What did it contain; what kind of information did it have?

A. It said that the——

Mr. Haggerty: (Interposing) Well, just a moment. I object. I object. I presume that the letter would be the best [fol. 711] evidence.

Mr. Lipson: With the Court's permission, then,——

(Whereupon, a document was marked Government's Exhibit No. 81, for identification, by the reporter.)

Q. (By Mr. Lipson) Mr. Looker, I show you Government's Exhibit No. 81 and ask you if you can identify that exhibit?

A. I can.

Q. What is it?

A. This is the reply from Aviation Developments Limited just referred to.

Mr. Lipson: I show Government Exhibit No. 81 to counsel for defense, for examination and possible objection.

Mr. Haggerty: May it please the Court, with reference to this letter, it is purely hearsay, it is a correspondence between this witness and between somebody, and it covers some other subject matter, and I do not think it is permissible in evidence.

Would your Honor care to see it, or has your Honor seen it?

The Court: No, I have not seen it.

(Whereupon, the exhibit was handed to the Court.)

The Court: Do you wish to argue that?

Mr. Lipson: Your Honor, the only reason we are putting this—that we are offering this document at this time is in order to present the entire story of the Aviation Develop- [fol. 712] ments Limited offer of the Looker Lockbolt.

The issue was put in on cross examination by the defense, and we believe the Government has the right to show the entire story rather than just a limited portion.

Mr. Haggerty: It was only put in for the limited purpose on proper cross examination to show that he made an offer to a company and he has testified the company did not accept the license.

Now, to go into hearsay matters, and there are hearsay matters contained in that letter, which are entirely extraneous and immaterial to the matters here before us.

Mr. Pomeroy: If the Court please, I wish to join in the

objection but independently on behalf of Townsend and Mr. Dickenson, I would think this would be prejudicial to them if it was admitted generally.

The Court: I don't recall that the issue that was raised —in other words, if he raised a new point, I think you should be entitled to respond to it, but I do not think this is actually that issue, do you?

Mr. Lipson: Well, your Honor, the issue—this is from recollection, because, obviously, we haven't had a chance to examine the transcript of this morning's proceedings. Did I understand your Honor had ruled on it?

The Court: No, I had not. I just wanted you to concur with what I possibly will.

[fol. 713] Mr. Lipson: I think it is relevant, your Honor, to what was brought out this morning. It was brought out that Looker had tried to license a patent development of his Looker Lockbolt, we called it, to a number of firms. I believe Illinois Tool was one of them, and Aviation Developments Limited was mentioned as one of them.

Illinois Tool refused for reasons stated this morning, and it was also noted that Aviation Developments refused. However, no reasons were ever elicited why Aviation Developments refused. Now, we submit, if it was relevant to determine why Illinois Tool refused, it is equally material to determine why Aviation Developments refused.

Mr. Haggerty: I think it is totally——

Mr. Lipson: (Interposing) Particularly because it goes to the question of——

Mr. Haggerty: (Interposing) Go right ahead.

Mr. Lipson: (Continuing) —of the question of whether or not there was a valid Looker Lockbolt to license, whether he was licensing something for real, whether or not firms would regard this as a desirable product, or whether they rejected it for reasons apart from its value as a fastening device.

The Court: But, Mr. Haggerty offered it merely testing the credibility, as I recall.

[fol. 714] Mr. Haggerty: That is correct.

The Court: And not to test whether or not we are going into the business of Mr. Looker's Lockbolt. I think it is immaterial.

Mr. Lipson: On that basis, your Honor, I will withdraw the offer.

The Court: All right.

Q. (By Mr. Lipson) Now, Mr. Looker, you were—it was brought out—subpoenaed—strike that.

You testified—will let me strike that again.

You testified this morning that you had a meeting with me, Jack Lipson was "me", you recall the circumstances of that meeting?

A. Yes, I do.

Q. Would you describe to the jury what happened at that meeting?

The Court: When, please?

Q. (By Mr. Lipson) This is, I believe with reference to a period of October, 1960.

A. Assuming that is the period of the Grand Jury held in Detroit to investigate alleged monopoly practices, I had a meeting with yourself, prior to going on and testifying before the Grand Jury.

Q. What did that meeting—pardon me. What did that meeting consist?

[fol. 715] A. About ten or fifteen spoken words.

Q. Do you recall what any of the words were?

A. I believe I said I am Bob Looker, and you said I am Jack Lipson. And—or some such, and you said if you will wait here I will call you when we go on. And I said, thank you. And I don't know anything else was said, or that was about what was said.

Q. Was there anything else in connection with conversations between you and I at that period?

A. Not to my memory, no.

Q. Did you appear here in Detroit voluntarily at that time?

A. No.

Q. Under what auspices did you appear?

A. I had a subpoena.

Q. Mr. Looker, I show you Defendants' Exhibit Marked X and I direct your attention to paragraph Numbered 3 in that letter. Will you just read it to yourself.

The Court: This is the letter of October 27, 1961; Mr. Looker writing to the Department of Justice?

Mr. Lipson: Yes, sir.

The Court: All right.

Q. (By Mr. Lipson) Now, you have already had occasion to read this paragraph 3 to the Jury. With your Honor's permission I would just like to re-read it rapidly so that—the paragraph No. 3—so that the questions I ask [fol. 716] will have some meaning?

The Court (Interposing) All right.

Mr. Lipson: (Continuing) —to the Jury.

The Court: He had read it. All right, go ahead.

Q. (By Mr. Lipson) (Reading): "I have given Huck a full 20 per cent distributor discount on Brown-Line Collar Splitters and spare parts purchased by Huck for resale purposes, shipping parts usually immediately and on open credit, despite Huck's refusal to negotiate a distributorship agreement."

What is a Collar Splitter, that is all I want to get at?

A. This is a device manufactured by our company for cutting away the installed collar of a lockbolt device, for removal purposes.

Q. Did you have some kind of a contractual relationship with Huck Manufacturing Company with respect to this device?

A. No, we didn't.

Q. Did you have any kind of a relationship with Huck Manufacturing Company with respect to this device?

A. Other than manufacturer and a buyer relationship.

Q. Is it a normal practice of your company, Brown-Line, to grant a percentage discount of that size to a buyer?

A. No.

Q. Would you explain why the Huck Manufacturing [fols. 717-721] Company was offered such a discount?

A. Yes. The parts used was predicated on the use of lockbolts and this was a device for removing them when they had to be removed. Once a lockbolt collar is swaged on the pin it is very difficult to remove, and this is a very specialized tool, it was my intent and hope to encourage the Huck Company to sell the collar splitters of our company's manufacture and so extended the 20 per cent discount to continue the relationship.

[fol. 722] Redirect examination. (Continued)

By Mr. Lipson:

Q. Mr. Looker, I show you a photocopy of Defendants' Exhibit Y. Do you recall that exhibit?

A. I do, yes.

Q. Is that the exhibit that deals with the possibility of licensing another firm for a lockbolt?

A. Yes.

Q. When was this document written?

A. August 11, 1955.

Q. And you were with Huck at that time?

A. Yes, I was.

Q. May I ask what kind of a lockbolt is referred to in this Defendants' Exhibit Y?

A. We were referring to a lockbolt designed specifically for building construction, heavy frame work.

Q. Was Huck making such a lockbolt at that time?

A. No.

Q. Do you know whether the Townsend Company was making such a lockbolt at that time?

A. Yes, I do.

Q. Were they?

A. No, they were not.

Q. To your knowledge, was a special license ever granted to Camcar, I believe that is the firm mentioned in the Exhibit?

[fol. 723] A. No, it was not.

Q. Thank you. Mr. Looker, I would like, at this time, to show you Defendants' Exhibit CC, a patent bearing the date April 11, 1961, and the Egnot drawing which I believe is the—it is Defendants' Exhibit Z.

With respect to the patent, what Government organization issued this patent?

A. The Department of Commerce.

Q. To whom?

A. To myself.

Q. Now, would you compare the, the Egnot drawing with CC, please.

Now, did you ever have an occasion to solicit a patent attorney's opinion about the relationship of those two

illustrated devices, the devices illustrated in the, the Egnot drawing, and the device illustrated in CC, the patient?

A. Yes.

Q. On what occasion did you solicit this advice?

A. Immediately following receipt of the Egnot Disclosure sent to me by Mr. Sterritt, I sent this same drawing down to my patent attorney and asked him——

Q. (Interposing) Who is he, by the way?

A. Mr. William Pavitt.

Q. And where is he located?

A. He is located in Los Angeles.

Q. And what is the time of this? When did this occur?

[fol. 724] A. It was last year sometime.

Q. What did you ask Mr. Pavitt?

A. I asked him——

Mr. Haggerty: (Interposing) Well, just a moment. May it please the Court, I think we are getting into hearsay. As to what Mr. Pavitt told him would clearly be hearsay.

Mr. Lipson: Your Honor, this goes to the question of credibility.

Mr. Haggerty: Even then, I don't think we can eradicate the rule of hearsay.

Mr. Lipson: Motive. The issue was raised on cross examination, your Honor, concerning a comparison between these two devices.

The Court: I well recognize that defense counsel did cross examine him, and that you should be allowed certain latitude with respect to redirect, but I am wondering whether or not conversation is the answer.

I think I will sustain the objection. This is still hearsay, as to what the conversation was. What he did is another thing.

And, this is well after the indictment.

Mr. Lipson: Yes, your Honor.

Q. (By Mr. Lipson) Mr. Looker, I would like to show you—may I have the Z and CC drawings, please?

I would like to show you a copy of the Government [fol. 725] Exhibit No. 52—the document I am actually showing the witness is a photocopy of Exhibit 52, if you have no objection.

The Court: This is the October 1st, '55 price increase?

Mr. Lipson: I believe that is the date.

Mr. Haggerty: October 3rd, '55.

Mr. Lipson: Third.

Mr. Haggerty: I have no objection to your using that, Mr. Lipson.

Q. (By Mr. Lipson) Do you recall the price increase referred to in that document?

A. I do, yes.

Q. To what extent, Mr. Looker, was the price increased with respect to lockbolts only, noted in that document, justified in order for the Huck Manufacturing Company to stay in business and make a nominal profit?

A. The increase shown for commercial lockbolt pins and collars was justified. The increase shown for aircraft lockbolts was not justified.

Q. Will you explain your reasons for that conclusion?

A. Yes. At the time that we were—the company was deciding when to raise prices and for how much, the conclusion was that the commercial lockbolt should be—commercial lockbolt prices should be increased fairly substan-[fol. 726] tially and that there was little or no justification for some of the aircraft lockbolt price increases. I believe for the aircraft lockbolt steel prices. Particularly 3/16 and ¼" diameters, which constituted a large sale of aircraft lockbolts.

At the time the price increase was compromised to the extent that although no increase was justified for the 3/16" and ¼" diameter steel aircraft lockbolts, they were increased five per cent and that the commercial lockbolt pin prices were not increased as much as they—as much as the company wanted to increase them, prior to this change.

Q. Thank you. May I have the document, please?

Apart from the present proceedings, have you ever had occasion to testify in any court?

A. Yes, I have.

Q. What occasions?

A. I testified before the United States Court in the Southern District of California.

Q. On what occasion was that?

A. On an occasion of a patent infringement suit between Huck and Townsend Company, 1952.

Q. And at whose request did you testify?

A. At Huck's request.

Q. And on whose behalf did you testify?

A. On the behalf of Huck.

Q. When was the other time that you testified?

[fol. 727] A. I testified in deposition for a patent interference case in Los Angeles.

Q. Was the case in Los Angeles, or was the deposition in Los Angeles?

A. The deposition was in Los Angeles.

Q. Who were the litigants?

A. The litigants were the Huck Manufacturing Company and the Olympic Screw and Rivet Company.

Q. When did this occur?

A. It occurred, I believe, last year.

Q. At whose request did you testify?

A. At the request of the Huck Company.

Q. On whose behalf did you testify?

A. On the behalf of the Huck Company.

Q. After you testified, were there any statements made to you by the Huck people with respect to the nature of the testimony you gave?

A. Yes.

Q. What were those statements, and who made them?

A. Both Mr. Blair and Mr. Sterritt congratulated me on several occasions for my expert testimony and for the splendid cooperation I gave the Huck Manufacturing Company during the entire deposition proceedings.

Q. Would you identify Mr. Blair, I believe Mr. Sterritt has already been identified.

[fols. 728-729] A. Well, Mr. John Blair is a member of the firm Harness, Dickey and Pierce, and is their expert on patent interference matters, and was handling that case for Huck.

Q. One further question, if I may. The sum of $1,200,000 was brought out yesterday as the claimed damages in your suit against the Huck Manufacturing Company and the Townsend Company.

A. You are referring to the Brown-Line suit, sir?

Q. That's right, the Brown-Line suit.

A. Yes, that is correct.

Q. Would you explain to us how that figure $1,200,000 was arrived at?

A. Yes, we estimated that we suffered—have suffered damages during the past four years of some four hundred thousand dollars profit, before taxes, and we trebled that number because it is a trebled annual suit.

Mr. Lipson: I have no further questions on redirect, your Honor.

Mr. Haggerty: No questions, may it please the Court.

The Court: Mr. Pomeroy?

Mr. Pomeroy: I have nothing further, your Honor.

The Court: Any other cross examination?

All right, you may step down.

* * * * * * *

[fol. 730] Robert E. Byrnes, was thereupon called as a witness on behalf of the Government, having been first duly sworn by the Court, was examined and testified upon his oath, as follows:

Direct examination.

By Mr. Lipson:

Q. Would you state your full name for the record, please?

A. Robert E. Byrnes.

Q. And your address, Mr. Byrnes?

A. Chicago, Illinois. You want my whole address?

Q. Your whole address.

A. 130 Cartage Lane, it's Roselle, Illinois, it is a suburb outside of Chicago.

Q. And your business address?

A. 536 South Clark Street.

Q. What is your present occupation, sir?

A. Special agent of the F. B. I.

Q. And how long have you been employed in that capacity?

A. A year and a half, sir.

[fol. 731] You will have to excuse me, I have a sore throat. I think I am getting the flu.

The Court: Excuse this witness right now.

Mr. Lipson: I will excuse your sore throat.

Q. (By Mr. Lipson) Where were you previously stationed before you came to Chicago?

A. At Atlanta, Georgia.

Q. Have you ever had occasion to visit the Lockheed Aircraft Factory outside of Atlanta?

A. Yes, sir. Back in January, 1962, I took some photographs of lockbolts being installed in a section of an airplane at Lockheed.

Q. All right. Who was with you on that occasion?

A. Special Agent John Boyle, and yourself and Mr. Esherick, I think, I can't recall, and—there was four of us.

Q. I would like, at this time, to show you an exhibit—Exhibits 8, 9, 10, 11, 12, 13, 14, 15, and 16 for the Government, and ask you to look at each of those exhibits.

Mr. Pomeroy: If the Court please, 8 to 13, I think, have been received in evidence already.

Mr. Lipson: Your Honor, they have been received in evidence, but on a very limited basis, and the Government prefers that they be received in their entirety for the truth of what they depict.

If I may draw the Court's attention to page 164 of [fol. 732] the transcript of this case, starting on line 12 of that page:

(Reading):

"Mr. Lipson: Your Honor, at this time, the Government offers into evidence the exhibits previously identified by Mr. Looker as 8 through and including 13

"(Exhibits handed to counsel.)

"Mr. Lipson: Your Honor, there being no objection——

"Mr. Dickey: Well, wait a minute. I take it that these are photographs that were not taken by the witness.

"Mr. Lipson: I think we established that.

"Mr. Dickey: Well, all right. And he didn't see them taken and he wasn't present when they were

taken, and that they are illustrative merely of the way of installing the lockbolt.

"Mr. Lipson: They are offered for that purpose.

"Mr. Dickey: And there is no evidence here it is the photograph of some actual operation that is on some aircraft or product that was in the course of manufacture during this installation.

[fol. 733] "The Court: The witness testified that it apparently was.

"Mr. Lipson: Yes, Mr. Dickey, it is exactly what Mr. Looker did testify to.

"Mr. Dickey: Well, Mr. Looker wasn't present.

"My point is this: I have no objection to this admission as illustrative of the installation of the lockbolt. I just want to get them characterized that way, that is, no objection that this witness either saw or carried on himself. He is testifying from his knowledge or memory or familiarity of installation of lockbolts.

"The Court: It is received for that purpose alone.

"Mr. Lipson: Your Honor, if there exists any problem at all with respect to the authenticity of the device, these photographs we are referring to, we have in the court room the actual photographer and we are ready and willing to put him on the stand to testify to that and since Mr. Dickey does have these reservations, we reserve our right to put the photographer on the stand."

The Court: All right. Go ahead.

[fol. 734] Q. (By Mr. Lipson) Now, Mr. Byrnes, can you identify whether exhibits 8 through and including 16, were the photographs taken by you on that occasion?

A. Yes, sir, they are. On certain photographs, are close-ups, is a card shown with my initials and John Boyle's initials and the date they were taken, and the file number of the Atlanta office. Each photograph is also stamped on the back explaining what it is and the date and by whom the photographs were taken.

Q. Who developed these photographs?

A. I developed the negatives and printed the photographs myself.

Q. Did you ever have any prior experience as a photographer?

A. Yes, sir.

Q. On what occasion?

A. Well, when I worked in the New York office of the F.B.I. I was a photographer for about eight years.

Q. Now, the exhibits 8 through and including 13 have already been identified, and I see no point to going into them at this time.

With respect to Exhibits 14, 15 and 16, could you tell us what each of those represent, in order?

A. On the back explains this is a photograph of the rear beam center wing section of the plane.

Q. Now, this is which exhibit you are holding up?

A. This is 14.

[fol. 735] Q. All right. Now with respect to 15, what does that bear?

A. No. 15 is the center wing section, front beam showing.

Q. And No. 16?

A. And No. 16 is the center wing section.

Q. Thank you.

REOFFER OF CERTAIN EXHIBITS

Mr. Lipson: Your Honor, at this time the Government would like to reoffer Government Exhibits 8 through 13 in their entirety and without limitation as depicting the actual installation of lockbolts under factory conditions at the Lockheed Aircraft Plant in Marietta, Georgia, taken approximately one year ago.

Mr. Haggerty: No objection, may it please the Court.

Mr. Lipson: At the same time we now offer Exhibits 13, through 16, as various sections of aircraft there in construction at that plant, at that time.

Mr. Haggerty: No objection.

The Court: They may be received.

* * * * * * *

[fol. 736] Cross-examination.

By Mr. Dickey:

Q. Mr. Byrnes, did you put the legend on the back of these photographs, Exhibits 1 through 16?

A. The stamp marks?

Q. Yes.

A. Mr. Boyle and myself did, Agent Boyle. He wrote—the stamp is just a—made with a small stencil and he wrote it in his own hand, the description of what the installation was.

Q. You observed all of this, did you?

A. Yes sir, we worked together.

Q. Looking at Photograph No. 1, which is Exhibit 8, at the upper left part of the photograph are—those two parts projecting there, are those lockbolts?

A. Yes, sir, as best I can recall. The man whose back is [fol. 737] shown in one of the photographs is installing these and we took the photographs while he was working alone at the beam or whatever section you call it. I don't know.

Q. The reason I inquire is that I——

A. (Interposing) They're not—they're not die shops, so I don't know whether they're supposed to be ridges or—they're marked on it. You can see it in this one (indicating).

Q. And looking at Photograph No. 2, which is Exhibit 9,

I call your attention to the part shown in the upper right hand and——

Mr. Haggerty: (Interposing) Will you keep your voice up, please? I don't think we can all hear you.

Q. (By Mr. Dickey, continuing) Referring to Exhibit 9, which is Photograph No. 2, the part shown in the upper righthand corner of the photograph, is that a lockbolt and is that——

A. (Interposing) We don't really know. I presume it is. But this photograph was taken to show the lockbolt gun more than anything else and show it being put on the lockbolt.

Q. You don't know, then, as—whether that's a lockbolt that has been already applied or not, that one in the upper righthand corner?

A. I assume it was, but I really don't know.

Q. Referring to Photograph No. 6, which is Exhibit 13, I call your attention to the parts which appear to be to the rear at the beam. Do you see those in the upper part in the [fol. 738] upper righthand part of the photograph?

A. Yes.

Q. What are those parts; do you know?

A. Offhand I wouldn't. On looking at this, it looks like a different section than behind the one the man is working on. This is what he's working on, and the section number one and two in the background is a different piece, I presume.

Q. Different piece. That's not part of the section he's working on?

A. Well, looking at it this way, I would say no.

Q. Yes. And I notice some spots or marks on those pieces that are back of the section the man is working on. Are those lockbolts?

A. I don't know. I didn't have any occasion to take any photographs of them.

Q. Okay. Looking now at Photo No. 7, which is Exhibit 14, what part of an airplane is that? Show me.

A. I would have to refer to the back of the photograph, if I may. I don't know one part of an airplane from another.

Q. Oh, I see.

A. Those descriptions were taken from one of the work-

ers there and Mr. Boyle took notes and transferred it on the back of the photographs as they were printed.

Q. The information put on the back of these photographs is information, then, that was obtained from workmen?

[fol. 739] A. Right, workmen on the job.

Q. Not information within your personal knowledge or Mr. Boyle's either; is that right?

A. That's right.

Q. All right. Now, you don't know what parts—what part is this (indicating)? It looks like some sort of a beam, but do you notice any lockbolts applied in that—in that beam, in that part?

A. Do you mean did I observe any beam——

Q. (Interposing) Are there any applied there that you can point out?

Mr. Lipson: Your Honor, I object to this. The witness has not testified as to his knowledge to distinguish lockbolts from any other fastener. He has testified as a photographer to the authenticity of the devices here photographed.

The Court: Well, he did make a legend on the back and I think you are entitled to cross examination.

Mr. Lipson: The legend makes no reference to lockbolts on this, your Honor.

The Court: He does not—he testified he did not know one wing part from another.

Mr. Lipson: That's right.

The Court: Well, I think it is proper cross examination in this respect.

[fol. 740] A. Well, the legend on the back of the photograph describes this as the rear beam, center wing section and that's—we didn't take any photographs of lockbolts being put in this section of the wing.

Mr. Pomeroy: Excuse me. What exhibit number is this?

Q. (By Mr. Dickey, continuing) Well, then, you don't know whether there are any lockbolts applied in that section or not in that photograph?

A. No, this was just a photograph taken from a distance showing the rear beam of the center wing section.

Q. I see. All right. Further, with respect to the same photograph, Exhibit 14, I notice in this beam that you

mentioned a lot of dots along the lower part of it, a lot of dots along the upper part of it and dots running up across it.

Do you know what those are?

A. No, sir, I do not.

Q. No idea?

A. No, sir.

Q. Does the same answer apply to Photograph Number 8, Exhibit 15?

A. This is an overall photograph of the center wing section, front beam showing. That's all that was supposed to depict.

Q. Oh. And whether or not there are any lockbolts in [fols. 741-742] this beam, you don't know?

A. I do not, no.

Q. The same applies with respect to Photo Exhibit 9, Government Exhibit 16?

A. Number 16 is an overall photograph of the center wing section.

Q. Any lockbolts applied in that wing section, as far as you know?

A. I do not know.

Q. You don't know.

The Court: I take it that your services were acquired purely for the purposes of photography, is that correct?

A. Yes, sir, I just took the pictures I was told to and——

The Court: (Interposing) All right.

Mr. Dickey: That's all I have.

* * * * * * *

[fol. 743] Mr. Lipson: Mr. George Q. Mathews, please take the stand.

GEORGE Q. MATHEWS, was thereupon called as a witness in behalf of the Government, and having been first duly sworn by the Court, was examined and testified upon his oath, as follows:

Direct examination.

By Mr. Lipson:

Q. Mr. Mathews, would you please state your full name and address?

A. George Q. Mathews, 3311 Kirkwood Avenue, Orange, California.

Q. And what is your business address?

A. 2901 West Coast Highway, Newport Beach, California.

Q. And with whom are you employed?

A. Rosan, Incorporated.

Q. What is your age, Mr. Mathews?

A. 44.

Q. Mr. Mathews, beginning the period of about 1943, would you tell us with whom you were employed and what position you were employed in?

A. 1943?

Q. Yes.

[fol. 744] The Court: I think he wants to know when you first went to work for Huck.

Mr. Lipson: No, your Honor, this is going back a little.

A. That's beyond that a little, sir.

The Court: All right.

A. In 1943 I was employed by General Electric Company.

Q. (By Mr. Lipson) In what capacity?

A. The best my memory serves me, I was purchasing agent.

Q. How long were you employed by General Electric?

A. I was employed with General Electric until 1952, so it would have been about twelve years.

Q. Did you hold the same position throughout this period?

A. They were all related to procurement functions, yes, sir.

Q. With whom did you work after you left General Electric?

A. Wayne Works, Incorporated.

Q. And where are they located?

A. Richmond, Indiana.

Q. What kind of business is Wayne Works engaged in?

A. They're manufacturers of bus bodies for school transportation and for some small cities.

Q. What position did you hold with Wayne Works; what was your job?

A. I was again purchasing agent.

Q. Did you supervise any personnel there?

[fol. 745] A. Yes, we had, in addition to the normal purchasing functions, the buyers, the expediters, we had the production scheduling and the—what was called the knock-down shipping department. This is where the buses were partially assembled and then shipped for overseas shipment for subsequent assembly at the destination.

Q. Did your job concern or relate to the purchase of fasteners by Wayne Works in any way?

A. Through my buyer, yes, we purchased all the fasteners.

Q. Were you familiar with the Huck Manufacturing Company while you were employed at Wayne Works?

A. Yes. I was.

Q. In what relationship?

A. They were a supplier of ours.

Q. When did you leave Wayne Works?

A. In 1954.

Q. And where did you go?

A. I went to work with Huck Manufacturing Company.

Q. In what capacity?

A. As sales manager.

Q. About how long a period of time did you work for Huck Manufacturing Company?

A. I worked with Huck Manufacturing Company from 1954 until 1960.

Q. Can you give us the approximate date in 1960 when [fol. 746] you left Huck?

A. I believe it was September of 1960, sir.

Q. And where did you go from there?

A. To Rosan, Incorporated.

Q. In what position were you employed while you were with Huck originally in 1954?

A. Originally I was employed as sales manager.

Q. Did your position change at any time while you were employed by Huck?

A. My position changed when Mr. Looker left the company in 1956. I became vice president of sales.

Q. Mr. Mathews, have you received a subpoena to testify at this proceeding?

A. I have, sir.

Q. Have you ever had occasion to talk to any of the attorneys on either side involved in this proceeding?

A. I have, sir.

Q. Which attorneys?

A. I have talked to yourself. I have talked to the defense attorneys, both defense attorneys.

Q. Would you name them, please?

A. I don't know if I can name them or not. They're all sitting here. There was three of the defense attorneys, I believe, that I visited with in my office. I believe it was January.

And I visited with the Huck attorneys once since I have [fol. 747] been here. I visited with yourself once in my office.

Q. Did you ever come to the Department of Justice in Washington, D.C.?

A. No, sir.

Q. Getting back to your original employment at Huck Manufacturing Company, would you tell us what was the nature of your duties as sales manager for Huck in 1954 when you originally worked for them?

A. Well, in 1954, when I was originally employed, my basic duties were to develop the use of lockbolts on a broader marketing basis, trying to get into more industries than we were now selling to and to develop a sales field organization to accomplish this goal.

Q. Did you have an occasion at that period of time, shortly after you came with Huck, to engage in any reorganization of the sales department?

A. By reorganization——

Q. (Interposing) Was there any major change made in the structure of the sales department at that time?

A. Well, it might be presumed to be a change, but, that, in that after my joining Huck after, Mr. Looker and I more or less split the activities. I was concentrating on the commercial markets and Mr. Looker was concentrating on the aircraft market.

Q. Now, after Mr. Looker left, was there any change?

[fol. 748] A. Organizationally after Mr. Looker left, we eliminated the general position that I had held and in its place we set up divisional sales managers, who were responsible for both aircraft and commercial in a given geographical area.

Q. To whom were these divisional representatives responsible, what person?

A. To myself.

Q. And where were these divisional representatives located geographically?

A. Eventually, after we got the program started, they began by being located in Detroit for organizational training purposes, and we subsequently had a division office in St. Louis, which covered the midwest. We had a division office in Atlanta, Georgia, which covered the south. We had a division office in Philadelphia, which covered the east, and, of course, the western division was always a seperate division from the time I first joined the company and it was headquartered in Los Angeles.

Q. Within this divisional set-up, were there any salesmen assigned to the individual divisions?

A. Yes, in all instances.

Q. How did the salesmen operate?

A. Excuse me. Each salesman had a geographical area, a small portion within each division, for which he was responsible to promote the use and sale of the company's products.

[fol. 749] Q. In this divisional—well, let me ask you, how long did this divisional framework that you have just described to us last?

A. To the best of my knowledge, in recollection, it was still in effect when I left, sir.

Q. Now, you have mentioned the company's products.

What were the company's products during the time you were employed as vice president in charge of sales?

A. The company's products, during my period, were the lockbolts in many varieties. We had the commercial lockbolts. We had the aircraft tensile lockbolts. We had the aircraft shear-type lockbolts. We had also the specialized type of lockbolts that went into the Marine industry, the structural steel industry, the railroad car industry.

Q. Mr. Mathews, to what extent during this period of time were your personal efforts involved in selling for or encouraging the sale of lockbolts as opposed to any of the other company products?

A. Well, actually we never separated our activities in this manner. Our responsibilities in sales were to promote all the products of the company's manufacture.

It was necessary to exert just as much effort in blind rivets for the various industries which had been developed and a related amount of necessary tooling to keep the entire product of the factory sold, not just a segment of it. [fol. 750] Mr. Lipson: Your Honor, at this time the Government would like to inquire of counsel whether they have had an opportunity to examine Government's Exhibit No. 80, previously offered.

Mr. Haggerty: I thought it was 70.

Mr. Lipson: 80.

Mr. Haggerty: 80, you are right. Yes, we have, and we are ready to give you an answer on that. We have no objections to its admissibility.

Mr. Lipson: Thank you.

The Court: It may now be received.

Mr. Haggerty: This is our good-natured day.

Mr. Pomeroy: If the Court please, I understand this is the tabulation of sales figures furnished by the Defendant Huck. I have no objection to it, insofar as lockbolt sales are concerned which are the product of issue in this case.

There is also a column on another product, called blind rivets. I would object to that, as far as Townsend and Mr. Dickenson are concerned as incompetent, irrelevant and immaterial.

Mr. Lipson: Your Honor, the Government offers it solely for the figures relating to lockbolts and with no respect does it——

[fol. 751] The Court: (Interposing) I thought it was stipulated by both parties. I am sorry I admitted it prior to your objection, Mr. Pomeroy.

Are those figures for Huck alone?

Mr. Lipson: I believe they are.

Mr. Haggerty: They are for Huck alone.

The Court: All right. Then it is not admitted as far as any evidence of sales of——

Mr. Lipson: No, sir, no intention of that.

Mr. Pomeroy: Townsend Company.

The Court: Townsend Company, all right.

Mr. Lipson: Would you—with your Honor's permission, I would like to read a portion of this at this time.

It is titled (Reading):

"Total Annual Sales for Lockbolts and
"Blind Rivets in the U.S.A. and the
"Foreign Market
"January 1, 1950-September 14, 1960

Sales in the U.S.A.	Lockbolts
1950	$ 433,795.14
1951	1,444,834.55
1952	1,384,213.78
1953	1,250,626.64
1954	1,675,104.83
1955	2,659,130.77

[fol. 752]

1956	3,500,340.80
1957	5,036,785.03
1958	4,405,148.46
1959	5,530,418.32
1960	3,577,720.96
"Total	$30,898,119.28"

I will omit the column which is with respect to sales in the foreign market.

Q. (By Mr. Lipson) Now, Mr. Mathews, would you describe for us the manner by which prices were determined

for lockbolts within the Huck Manufacturing Company, to the best of your knowledge.

A. You mean, sale prices, sir?

Q. That's right.

A. To the best of my recollection, the cost department would prepare a spread sheet which would show the various products of the company.

It would also show the selling prices, the average selling prices that we had been selling the product for, and from these two figures we would have a proposed selling price that we should have to get the full margin of profit for the company.

And with the presentation of these sheets, there was [fol. 753] usually a meeting with the cost people, with management, and we would discuss the necessity of increasing prices.

Those which I participated in, to the best of my recollection, were usually a compromise. If production costs had increased on some items, due to various reasons, oftentimes sales did not feel they could—the market could absorb such selling prices and these were arbitrarily compromised and held at a lower figure.

Q. To what extent did Mr. Armour participate in these meetings?

A. Well, I don't recall a specific meeting, sir, or any specific meetings. But to the best of my recollection, I am sure, when he was there, he did participate in these discussions.

Q. You say, when he was there. Was this an unusual—was his presence or absence unusual?

A. No, it was routine normally as Tuesday and Wednesday of every week he was in the Detroit office.

Q. Was there any individual person in the Huck organization who had the final say on whether or not the prices would be in accordance with the recommendations of the committee?

A. The final approval, insofar as the sales department is concerned, normally came from my superior, Mr. Benkert, our executive vice president.

Q. And what is Mr. Benkert's position with respect to Mr. Armour; where does he stand in the company?

A. Mr. Armour was our president and Mr. Benkert was

[fol. 754] our executive vice president and general manager.

Q. Was there anyone between them and—in the chain of command, so to speak?

A. Not to my knowledge, no, sir.

Q. During the period of time you were employed by the Huck Manufacturing Company, both as sales manager and as vice president in charge of sales, what other firm manufactured and sold lockbolt devices?

A. Well, there was the Townsend Company; there was the Standard Pressed Steel Company; there was—Voi-Shan, I believe was the other licensee here in this country.

Q. Well, we are just interested in this country.

A. They were the three.

Q. Now, with respect to Standard Pressed Steel and Voi-Shan what kind of lockbolts did they manufacture and sell?

A. They were manufacturing the titanium lockbolts.

The Court: The what?

A. Titanium.

Q. (By Mr. Lipson, continuing) What kind of lockbolts did the Townsend Company manufacture and sell?

A. To the best of my knowledge, the Townsend Company sold and manufactured a complete line of lockbolt products.

Q. Are you familiar with a firm, or a division of a firm, known as the Cherry Rivet Division of the Townsend Company?

A. I know who they are, yes, sir.

[fol. 755] Q. Where are they located physically?

A. Their plant is located in Santa Ana, California.

Q. And they are part of the Townsend Company?

A. They—I understand it to be a diversion of Townsend Company, yes, sir.

Q. By the way, I don't believe I asked you, during the period of time when you were vice president in charge of sales of the Huck Manufacturing Company, can you recollect the industries to which lockbolts were sold?

A. Well, I can recall several of them. The aircraft industry, of course, continued to be a large user.

Within the aircraft—you—you want just the industries?

Q. Just the industries now, yes, sir.

A. The—during the growth period there, related in the

sales figures, there was considerable growth in the railroad car building industry, the building of freight cars and of passenger cars, the truck-trailer industry was a large user of lockbolts.

There was considerable usage in the industrial equipment industry, such as fans, blowers.

There was very excellent usage developing also in the shipyards for the Marine industry.

Q. With respect to the aircraft industry, now, do you recall any of the major customers during this period of time?

[fol. 756] A. Well, a few of them.

Q. The names and the locations, the geographic locations?

A. The Boeing Airplane Company at Seattle, in Wichita, Seattle, Washington and Wichita, Kansas; The Lockheed Aircraft Company at both Burbank and Marietta, Georgia.

Q. That's Burbank, California?

A. Burbank, California. I'm sorry.

Douglas Aircraft Company, Long Beach, California.

Those are the most prominent ones that come to mind.

Q. With respect to the railroad car building industry, do you recall any of the prominent customers during this period of time?

A. Yes, the Pullman Company in Chicago was a user of the lockbolts; the Southern Railroad in Spartanburg, South Carolina; the Missouri-Pacific Railroad in Missouri.

Q. With respect to the truck-trailer industry, do you recall the names of any of the prominent customers during this period of time?

A. Yes, Fruehauf Trailer Company in Avon Lake, Ohio and also their Memphis, Tennessee plant; Strick Trailer; Miller Trailer.

Q. Where is The Strick and Miller located?

A. I beg your pardon.

Strick is in Philadelphia, Pennsylvania and Miller is in Florida.

[fol. 757] Q. With respect to the industrial equipment industry that you mentioned, do you recall the names of any prominent customers there again during this period of time?

A. Well; Buffalo Forge in Buffalo, New York; Barry Blower in Minnesota.

Q. Now, with respect to the shipyards that you mentioned, do you recall any of the shipyards that were customers during this period of time?

A. Well, I think the New York Shipbuilding in New York City was one of them, the New York Shipyard there; I believe the Charleston, South Carolina yards and the Mare Island at San Francisco to be.

Q. Where were those lockbolts actually manufactured; where were they fabricated?

A. The manufacturing for Huck Manufacturing Company was here in Detroit at—on Bellevue.

Q. Now, how did they get them here in Detroit to these various places that you have mentioned?

A. They were shipped by both truck and by rail.

* * * * * * *

[fol. 758] Q. Mr. Mathews, while you were employed as vice president in charge of sales, to what extent was it part of your duties to be familiar with the comparable prices for similar lockbolts produced by the Townsend Company?

A. As a member of the sales management, it was quite essential for us to know what all competition in competitive products were doing in the field. This is the only way you could set up your marketing program, was know what the competitive parts which you were attempting to compete with were being sold for.

Q. Were you in fact familiar with the Townsend Company prices on similar lockbolts manufactured and sold by Huck?

A. I was familiar with all competitive prices at that time, yes.

Q. Was there any relationship between the prices charged by Townsend and the prices charged by Huck for the same or similar lockbolts?

[fol. 759] A. To the best of my recollection all printed prices were basically identical.

Q. Did this extent for any limited period of time while you were with Huck, or was this the general nature of your business throughout your stay?

A. To the best of my recollection the printed prices were that way during my entire time with them.

Q. Now, to what extent was it part of the Huck Manufacturing Company's policy to deviate from its printed prices and its standard pricing policy?

A. Well, there were occasions where a large competitive bid was coming up and there were deviations; to what extent is hard to answer. I don't recall any great number of them.

Q. Well were these relatively frequent, or infrequent?

A. I would say infrequent.

Q. How did you obtain knowledge about Townsend Company's prices?

A. Whenever a competitive price list was printed and distributed we were always able to acquire them, either by being on a mailing list of some of our competitors or by men picking them up in the field and forwarding them into us. The most frequent method was by the salesmen running into them in the field, and the customers' structure.

Q. Do you have any recollection how the Townsend Price List got into the Huck Company's possession?

[fol. 760] A. No specific recollection, no, sir.

Q. Do you know whether or not the Huck Manufacturing Company kept a file of Townsend prices on the same type of lockbolts that Huck made and sold?

A. We kept files during my time of all competitors, yes, sir.

Q. Who was charged with keeping this file?

A. As I recall it—it changed several times, due to our growth and expansion, and to the best of my recollection our comparative competitive prices were last being retained in the Cost Department.

Q. Well who was the individual who would be responsible for this?

A. I believe, to the best of my recollection, that Mr. Braund was when I left there, sir.

Q. Would you spell the name, please?

A. (Spelling) B-r-a-u-n-d.

Q. Did he have a title with the Huck Manufacturing Company?

A. I do not recall any specific title, no, sir. He was in——

Q. (Interposing) Is Mr. Braund present in the courtroom at this time?

A. I do not see him, no, sir.

Q. During the course of time that you were employed at Huck Manufacturing Company did the Huck lockbolt prices have occasion to change from time to time?

A. Yes, we had some price changes while I was there. [fol. 761] Q. In which direction did they change, up or down?

A. I believe we had some of both, sir. I think that there were some adjustments which reflected reduced prices, and I think—and I am certain that there were some that reflected increases.

Q. Do you recall which was more prevalent?

A. I could not say specifically, no, sir.

Q. On these occasions when the Huck prices changed were you able to note any changes in the Townsend Company's prices?

A. I don't specifically recall more than—other than to the best of my recollection they were identical all during the period, so I would assume that in the same general area of a price increase that they issued one which became public also.

Q. You gave us the year when you left the employ of the Huck Manufacturing Company. What was the specific date, can you recall that?

A. I believe it was September of 1960. I cannot give you the exact date, no, sir.

Q. Do you recall the circumstances surrounding your departure from Huck?

A. You mean the reason I resigned?

Q. That's right.

A. Yes, sir. I had been in the Detroit area for six years and the weather was not to the best of my or my family's [fol. 762] liking, and I received a better paying offer on the west coast from Rosan, Incorporated, and I accepted it and went out there.

Q. Did you inform the Huck management your intention to leave before you left?

A. Yes, I believe that—if my memory serves me correctly—that I notified the Huck, some 30 days before I left, and it may have been a little longer than that, sir.

Q. When you say you notified Huck, what individuals did you notify?

A. I believe I first notified Mr. Benkert who was my immediate supervisor, and I subsequently spoke with Mr. Armour about it.

Q. Did Mr. Benkert or Mr. Armour say anything to you about your departure—your leaving at that time?

A. Well to the best of my recollection we had several discussions attempting to see if there wasn't some way that I could continue. To the best of my knowledge my services had been satisfactory and they wanted me to stay on. I don't recall——

Q. (Interposing) Did they make any concrete proposals to you?

A. Actually no, because I did not—I told them right in the beginning that the decision had been made, that I had already accepted the other position and it was not something that was negotiable.

Q. Was there any offer on the part of either Mr. Benkert [fols. 763-764] or Mr. Armour of additional salary if you remained on?

A. I believe the offer was extended, but as I say, I was not interested in discussing staying on further.

Q. Was there any antagonism between yourself and either Mr. Benkert, Mr. Armour or anyone in the Huck Corporation?

A. No, sir.

Q. Is there any today?

A. No, sir.

Q. Mr. Mathews, I show you Government Exhibit marked for Identification No. 82. Can you tell us who wrote that letter?

A. I believe I did, sir.

Q. May I have it. Thank you.

Mr. Lipson: I now show Government Exhibit marked 82 to defense counsel for examination and possible objection.

Mr. Haggerty: For the purpose of the record we object to it as being within the two year period from and after September 14, 1954.

The Court: Mr. Pomeroy, the same?

Mr. Pomeroy: Yes, please.

The Court: The same as the other objections?

Mr. Pomeroy: That's right.
The Court: It may be received.

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[fol. 765] Mr. Lipson: Do you recall that letter, Mr. Mathews?

A. The only recollection I have of it is having read it, I do not recall the circumstances or anything behind it, sir.

Q. Mr. Mathews, have you ever had a chance to examine these lockbolt license agreements of September, 1954, between Huck and Townsend?

A. To my knowledge I am not familiar with it, no, sir.

Q. Do you know whether there is any clause or any part of that lockbolt license agreement which is GX-17, in this case, that would be the foundation for this kind of a proposed reciprocating agreement discussed in this letter of July 23, 1956?

Mr. Pomeroy: If the Court please, the agreement will speak for itself. It calls for a conclusion.

Mr. Haggerty: Further the witness says he has no familiarity with the agreement, so how can he answer the question?

[fol. 766] The Court: He may answer. Let's see.

A. I do not know the answer.

Q. (By Mr. Lipson) Mr. Mathews, was it part of your—let me make sure—the date on this letter is July 23, 1956, were you then sales manager or vice president in charge of sales?

A. This would appear to be probably about the time that I was appointed vice president in charge of sales. As near as I can recall, this would have been about the time that Mr. Looker was—had notified the company he was leaving and it was a transition period where we were both there; his not having left yet, and my just getting familiar with the activities of this office.

Q. Now was it part of your normal duties in that office to write letters of this kind to Townsend Company?

A. No, sir. Subsequently, with Mr. Looker's departure, my not being qualified to carry on the same scope of activity with regard to patents, licenses and so forth, this function

was transferred to the vice president in charge of engineering as far as the liaison with licensees was concerned.

Q. Now was the writing of this letter your idea or did you write it under someone's instructions?

A. I do not recall the circumstances of the letter.

Q. Well is it the kind of letter that you would have written on your own behest?

A. I do not believe so.

[fol. 767] Q. Who was your immediate superior at the Huck Manufacturing Company?

A. Mr. Benkert.

Q. Was there anyone besides Mr. Benkert and Mr. Armour who had authority to give you orders and what to do in your job?

A. No, sir.

Q. Mr. Mathews, at this time I would like to show you Government's Exhibit Marked No. 83, for identification.

Your Honor, here is a copy of that Exhibit. Could you tell me who wrote this, or under whose authorization it was written?

A. I wrote it, sir.

Mr. Lipson: I now show Government's Exhibit No. 83 to defense counsel for examination and possible objection.

Mr. Haggerty: No objection to it, but we notice on it are some red pencil marks, and that will not be considered part of the Exhibit.

Mr. Lipson: It is offered with the red pencil marks, sir.

Mr. Haggerty: It is offered with the red pencil marks. Then I object to it in the absence of an explanation.

Mr. Pomeroy: If the Court please, I object further for the reason that the copy of this document, which the Government furnished to us under motion and stipulation had no markings on it whatever, and was more—different J [fols. 768-769] number, the number being furnished us was J 3460.

Mr. Haggerty: This is J 2092.

The Court: It may be received.

Mr. Pomeroy: May we ask then to have a—be now furnished with an accurate copy of the Exhibit the Government is tendering?

The Court: Is the copy——

Mr. Lipson: (Interposing) I have, your Honor, one ad-

ditional photo copy. I am quite sure that the defendants were furnished with a photo copy of Document J 2092. We have just given them another copy of it, but I am convinced in my own mind that——

Mr. Pomeroy: (Interposing) Well I am saying to the contrary, Mr. Lipson.

Mr. Lipson: I would like, at this time, to read to you——

The Court: (Interposing) It may be received anyway.

. . . . . .

[fol. 770] Mr. Lipson: I show you Government Exhibit 83, once more, Mr. Mathews, and ask you if you can identify the handwritten notation in the margin; have you ever seen that handwriting before?

A. It would appear to be that of Mr. Benkert.

Q. Thank you. I will now read this handwritten notation in the margin.

"Letter released 9-18-56," and an initial. Can you identify the initial that appears after that notation?

A. This appears to be Mr. Benkert's initials.

Q. There is a reference in this document to Hubert; can you identify who Hubert is. "Would you please call Hubert," is the phrase.

A. That refers to Forest Hubert, who owns the F. B. Hubert Company here in Detroit, who were our advertising [fol. 771] counsellors and agency during that time.

Q. What would Hubert have to do with the matter referred to in Government Exhibit 83?

A. He handled all of the layout, art work, proof reading and printing of our literature and price lists.

Q. What kind of literature do you refer to in this memo? There is a reference to literature in the third paragraph, would you like to see it to refresh your recollection?

I am sorry, it is the second paragraph.

A. That is not exactly clear to me. That could have been either he did both illustrative literature with regard to products and price sheets. There could have been two subject matters in the same memo.

Q. Thank you. With respect to the handwritten notation about the letter released 9-18-56, do you know what letter that refers to?

A. I would presume it is the announcement letter to the customers. That is the normal follow-up to any price change.

Q. Now was this idea of arranging with Townsend to make new prices effective on a particular date your idea?

A. I am certain it wasn't my idea, no, sir.

Q. Were you acting under any instructions from anyone?

A. I don't recall specific instructions from anyone. I can only assume where I submitted a letter requesting approval that there had been some instructions to do so.

[fol. 772] Q. And from whom were those instructions more likely to have come?

Mr. Haggerty: I object to the form of the question.

Q. (By Mr. Lipson) From whom were those instructions —Strike that.

From whom might those instructions have come?

A. They most probably would have come from Mr. Benkert.

Q. By the way, Mr. Mathews, do you recall the specific nature of the price changes referred to in Government Exhibit No. 83?

A. I do not, sir.

Q. At this time, I would like to show Exhibits No. 84, 85, and 86 to you for the purpose of refreshing your recollection.

A. (Witness reviews exhibits.)

Q. Have you refreshed your recollection, Mr. Mathews?

A. I have, sir.

Q. Do you now recall the nature of the previous changes involved in Government Exhibit No. 83?

A. By nature, I—I don't know if I understand correctly what you mean.

Q. What were the items of price involved?

A. The items of price involved in this change here involved the complete line of blind rivets and lockbolts.

Q. With respect to lockbolts, now, was it—what was it? Is there any more specific recollection you have of the [fol. 773] type of pricing involved in this change?

A. No, the only thing this refreshes in my mind actually, as far as the change itself is concerned, was this was the change-over period when the freight allowed was added as

a change in policy; also it is when the western pricing was first established.

Q. Now, what is freight allowed? What are you referring to?

A. By freight allowed, this was where the company paid the freight to the customer's plant by carrier of the company's choice, providing they met the minimum requirements of poundage. Previously it had been a responsibility and cost to the customer to pay for the freight.

Q. I now show you Government Exhibit No. 84. I ask you if you can identify what that document is?

A. I can, sir.

Q. What is it?

A. It's a rough draft of a proposed announcement letter to the customer structure.

Q. Does it purport to bear a date?

A. It does, sir.

Q. What is that date?

A. September 14, 1956.

Mr. Lipson: I show Government Exhibit No. 84 to defense counsel for examination and possible objections.

Mr. Haggerty: No objection.

[fols. 774-775] Mr. Pomeroy: No objection.

The Court: It may be received.

* * * * * * *

[fol. 776] Mr. Lipson: What relation does this exhibit 84 have to the prior exhibit, 83, your memo, your memo to Mr. Benkert?

A. I would assume that this is the letter referred to in the previous exhibit which for the notation——

Q. (Interposing) I now show you Government Exhibit, marked number 85, and ask you if you can identify this.

The Court: You might give him the exhibit.

A. Yes, I can, sir.

Q. (By Mr. Lipson, continuing) Well, what is 85?

A. 85 is an interdepartmental correspondence to all engineering representatives, which would be our field sales force.

Q. And what is 86?

A. And 86 is the customer price adjustment announcement letter.

The Court: To the customer?

A. Yes, sir.

[fol. 777] Mr. Lipson: I show Government Exhibits marked 85 and 86 to defense counsel for examination and possible objection.

The Court: Is there any objection?

Mr. Haggerty: For the purpose of the record, may it please the Court, we object to both tendered exhibits, 85 and 86, for the reason they are not within the period of the statute of limitations.

The Court: Mr. Pomeroy, the same——?

Mr. Pomeroy: (Interposing) I would join that, your Honor. This was also true of Exhibit 84 which may——

The Court: (Interposing) You may have your objections. It may be received.

Mr. Lipson: Your Honor, before I make any attempt to read either of these, I would like to go back to Government Exhibit 84, the letter that we were just discussing, the proposed letter that we were just discussing. There was some handwritten notations that I did not bring to the Court's attention on that letter that I would like to do.

In the lefthand margin I notice there are some pencilled notations which I cannot decipher. Apparently they were scratched out, written at one time and scratched out, but in the upper margin is the pencilled notation "mail Tuesday, 25th."

Q. (By Mr. Lipson, continuing) Government Exhibit No. [fol. 778] 85 appears on Huck's Manufacturing Company departmental correspondence, dated September 25, 1956.

(Reading):

"Subject: Price Adjustment-Pricing Policy—Effective October 1, 1956.

"To All Engineering Representatives

"Copies A. W. Armour, Benkert, Messer, Tenny, Kruse, Westrick, Welch, Albritton, Brilmyer, Van Hecke, File * * *".

File is circled in pencil.

(Reading, continuing):

"C. Armour, Dobbe."

I don't believe that all of these names have been identified. Who is Mr. Messer?

A. Mr. Messer was midwestern division sales manager.

Q. And Mr. Tenny, who was he?

A. He was the eastern division sales manager.

Q. Who was Mr. Kruse, (spelling) K-r-u-s-e?

A. Mr. Kruse was order correspondent, I believe, at that time in the sales office here in Detroit.

Q. And who is Mr. Westrick?

A. Mr. Westrick was manager of the order department.

Q. And Mr. Welch?

A. Mr. Welch was Mr. Westrick's assistant.

Q. And Mr. Albritton?

[fol. 779] A. Mr. Albritton was in charge of manufacturing.

Q. I think Mr. Brilmyer has already been identified, Mr. Van Hecke?

A. He was in charge of the tool division.

* * * * * * *

[fol. 780] Mr. Lipson: What does that mean, GQM, EK? Or would you prefer to see it before you reply? I show [fol. 781] it to the witness.

A. This would indicate that this letter was signed in my absence by Ed Kruse, who was at that time in the sale office doing this type of work for us.

Q. Was he authorized to do that kind of thing?

A. Yes, sir.

Q. Government Exhibit No. 86. It is written on stationery bearing the imprint (reading):

"Huck Manufacturing Company
"Specialists in Cold Heading
"Riveting and Fastening Processes
"2480 Bellevue Avenue
"Detroit 7, Michigan."

It is dated September 25, 1956.

(Reading, continuing):

"To Our Customers:

"Subject: Price Adjustment."

I will omit reading the entirety of the letter. I show it to you, Mr. Mathews, and ask you if this is the final version of the proposed letter to all Huck customers that we previously read?

A. This appears to be the final of the previously read document, yes, sir.

Q. Do you recall—well, let me show you the previously read document and ask you if there are any substantial [fol. 782] differences between the drafts and the final?

The Court: The witness is through reading it.

A. No, there are not, sir.

Q. (By Mr. Lipson, continuing) Thank you. With that, you save me the burden of reading the document.

A. I wouldn't make a good reader today, I don't think.

Q. Mr. Mathews, do you recall how often Huck Manufacturing Company had a price rise in lockbolts? Was there a general period or a periodic interval?

A. I don't recall any fixed period or periodic interval. There were probably, during the six years I was there, at least three or four increases or price changes.

Q. Do you recall whether or not there were increases that followed on each other as quickly as six months?

A. I don't specifically recall any that followed as quickly as six months, no, sir.

Q. Do you recall any that followed even quicker than six months?

A. No, I don't.

Q. Do you recall any that followed closer together than a year?

A. I don't have a specific recollection, no, sir.

Q. I am referring to lockbolts.

A. I believe I—I understand it, yes, sir.

Q. At this time, I would like to show you Government Exhibit, marked for identification, No. 87, and ask you if you can identify it? It's a two page exhibit. Yes,——

[fols. 783-785] A. Yes, I can identify it.

Q. Would you, please?

A. The top sheet or page of Exhibit 89 is an interdepartmental correspondence letter relating to a price adjustment.

Q. And the second sheet?

A. And the second sheet is an announcement letter of the price adjustment to the customers.

Mr. Haggerty: Pardon me, is that Exhibit 87 or 89?

Mr. Lipson: 87.

A. 87.

Mr. Lipson: I now show Government Exhibit, marked No. 87, to defense counsel for examination and possible objection.

Mr. Haggerty: No objection.

Mr. Pomeroy: I have none.

The Court: It may be received.

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[fols. 786-787] By Mr. Lipson: Mr. Mathews, if memory serves, you had, prior to lunch, just identified Government's Exhibit No. 87, which I show you now. Is that the exhibit that you had seen before?

A. Yes, sir.

Mr. Lipson: I show Government Exhibit No. 87 to defense counsel for examination and possible objection.

Mr. Haggerty: No objection.

Mr. Lipson: Thank you.

Mr. Pomeroy: We have none.

The Court: It may be received.

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[fol. 788] Q. Mr. Mathews, I want to show you Government Exhibit No. 85, which was the price adjustment effective October 1, 1956, and Government Exhibit No. 87, which we have just been speaking of, which is a September 1, 1957, general price adjustment, and ask you to look at both these documents.

I would like to ask you if you can tell me whether there was a price adjustment, price increase or decrease for the Huck lockbolt line at any time between those two dates?

A. I do not recall another one, no, sir.

Q. Thank you, Mr. Mathews. Mr. Mathews, during the [fol. 789] time when—well, let's confine it to the period of time when you were employed by Huck, the entire period of time from 1954 through 1960.

Were you familiar with the method used in mailing out price lists, Huck lockbolt price lists to customers of Huck?

A. By the method, you mean, the procedure used internally?

Q. Exactly, right.

A. To the best of my recollection we, in the early days, the early part of my employment there, used an Addressograph system, wherein customers' names were recorded on addressograph plates and these were catalogued in the storage cabinets by a product line. If this customer is using lockbolts, blind rivets in the full line, then they were in one category.

If they were just users of aircraft lockbolts, they would have been in another.

And when price changes came up, the clerical people would take the category of addressograph plates that applied to the particular price list to be mailed out, and this was the basic basis for the distribution list that would receive this price list.

Subsequently I believe this was done on the I.B.M. machines.

Q. When you say "subsequently", can you recall the [fol. 790] approximate period of time when this switch was made from Addressograph to I.B.M.?

A. I believe this to have been in '56 or '57, but I cannot be certain.

Q. Well, during the Addressograph period, what department of the Huck Manufacturing Company had responsibility for sending out these price lists?

A. This was a part of the sales department.

Q. And subsequently, which department would have the responsibility?

A. Well, the clerical responsibility would then be under the accounting department, where the I.B.M. department reported.

Q. Do you recall the names of any of the individuals who

actually did the job of sending out these price lists during the Addressograph period?

A. It would have probably been under the guidance of either Mr. Kruse or possibly Mr. Welch. The actual function was done by the girls, and I do not recall any of their names, sir.

Q. You say "by the girls". Are these secretarial personnel you are referring to or clerical—

A. (Interposing) No, these are clerical people, typists and girls, file clerks.

Q. I show you Government Exhibit marked No. 88, and ask you if you have ever seen this kind of a memorandum, [fol. 791] this format before?

Mr. Pomeroy: You mean, before today?

Mr. Lipson: That's right.

A. You mean the basic form itself?

Q. (By Mr. Lipson, continuing) That's right.

A. Yes, I have, sir.

Q. Who used this form?

A. Mr. Benkert.

Q. I direct your attention to the lower righthand corner of the document. Do you recognize any writings in that lower righthand corner?

A. I believe to be Mr. Benkert's initials, sir.

Mr. Lipson: May I have Government Exhibit 88, please?

Q. (By Mr. Lipson, continuing) Oh, I omitted asking you, does the document purport to bear a date?

A. It does, sir.

Q. What date?

A. November 7, 1956.

Mr. Lipson: Thank you. Before offering this, I show this to defense counsel for examination and possible objection.

Mr. Haggerty: For the purpose of the record, I object to it as not being within the period contained in the information.

[fol. 792] Mr. Lipson: I am sorry. I don't understand Mr. Haggerty. It does purport to bear a date.

Mr. Haggerty: It doesn't purport to bear——

Mr. Lipson: (Interposing) It does purport to bear a date.

Mr. Haggerty: November the 7th, 1956.

Mr. Lipson: That's my understanding, as well.

Mr. Haggerty: It is not within the period of the statute of limitations.

Mr. Lipson: Your Honor, this is within a five year period before October 24, 1961, which, I believe is the date of the indictment.

Mr. Haggerty: You know, my mathematics are bad. I withdraw my objection.

The Court: I was thumbing through my notes to see the indictment date, too, and I was wondering about that.

Mr. Haggerty: It's October the 24th, '61, your Honor.

The Court: All right.

Mr. Haggerty: I have no objection.

Mr. Pomeroy: I have none.

The Court: Pardon?

Mr. Pomeroy: I have no objection, sir.

The Court: It may be received.

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[fol. 793] Mr. Mathews, have you ever seen this document prior to this date?

Let me show it to you once more. 88.

A. I—you said prior to this date?

[fol. 794] Q. That's right.

A. The only recollection I have of seeing this document was when you and I went over it. I undoubtedly had a copy of it, because I am shown on here for receiving one, but I do not recall anything particularly pertaining to it at the time of its issuance.

Q. Thank you. Mr. Mathews, do you know of any reason why the executive vice president of the Huck Manufacturing Company took over what you previously described as a clerical job of sending price lists out of Huck Manufacturing Company?

A. I do not, sir.

Q. Do you know of any reason why a change of this nature would have been the subject of a memorandum to the president of the company, Mr. Armour?

A. I do not, sir.

Q. I believe that you have previously identified for us Mr. Braund, associated with the Huck Manufacturing Company? Is that—or have you? Maybe my memory is failing.

A. We—I believe we identified who he was in the company, yes, sir.

Q. Do you know, Mr. Mathews, whether Mr. Braund—that is, H. C. Braund, had any duties or responsibilities with respect to exchanging price information with the Townsend Company?

Mr. Pomeroy: That is objected to as leading.

Mr. Lipson: Well, I will withdraw the question, then.

[fol. 795] Q. (By Mr. Lipson, continuing) Is Mr. Braund in this court room now? Do you see him?

A. Yes, sir.

Mr. Lipson: Your Honor, at this time I would like to make Government's Exhibits marked 89, 90 and 91, available to defense counsel for examination and possible objection before offering them.

Mr. Pomeroy: If the Court please, speaking for Townsend Company and Mr. Dickenson, I have no objection to the proffered exhibits, although I would like to point out for the record that neither of these, none of these three documents, nor Exhibit 88, previously admitted, was submitted by the Government in response to a motion to produce under the rules of criminal procedure and the stipulation which followed, so that we did not know until today that they were intended to be offered.

Mr. Lipson: Your Honor, in connection with that, the stipulation under which the documents that were turned over to the Defendants were turned over were—that dealt with the documents that the Government intended to introduce at that time.

Mr. Pomeroy: That was the stipulation. I am not making any objection.

Mr. Lipson: No, no.

[fols. 796-799] The Court: He is merely commenting, as far as I can see, so far.

Mr. Pomeroy: That is right.

Mr. Lipson: Being no objection, I withdraw my remarks.

The Court: Mr. Haggerty?

Mr. Haggerty: No objection to the three tendered exhibits.

The Court: They may be received.

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[fol. 800] Mr. Lipson: Do you know what position Mr. Horst held at that time, that period of time in 1957?

A. The—to the best of my knowledge, Mr. Horst held the position of assistant to the president throughout the entire period of my acquaintanceship.

Q. Do you know what position Mr. Chilcoat held at that time?

A. To the best of my recollection, Mr. Chilcoat was sales manager for the Cherry Rivet Division. His exact title I don't exactly recall, no, sir.

Q. And Mr. F. R. Dickenson?

A. Mr. Dickenson was president of the Townsend Company.

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Q. Mr. Mathews, I show you Government Exhibit marked No. 92, and ask you to examine t.

A. (Witness complies.)

[fol. 801] Q. Have you examined No. 92?

A. I have, sir.

Q. Do you recognize the signature?

A. I do, sir.

Q. Whose is it?

A. Mine.

Mr. Lipson: I show Government Exhibit No. 92 to defense counsel for examination and possible objection prior to offering it.

Mr. Haggerty: No objection.

Mr. Pomeroy: I have none.

The Court: It may be received.

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[fol. 802] Mr. Lipson: Do you recall the incident described in this Government Exhibit 92?

[fol. 803] A. I do, sir.

Q. Who is Ed Stau?

A. Ed Stau was the vice president and general manager of the Olympic Screw & Rivet Company.

Q. Do you recall him ever making the kind of request referred to in this letter?

A. As I recall the background of this particular letter, there had been numerous reports from my salesmen in the field throughout the customer structure that Olympic had developed a new lockbolt that was going to be marketed very shortly.

While we had not seen any such bolts, this repeatedly came to our attention and, as I recall it, I received a telephone call, first from Mr. Stau's office on the West Coast, telling me that he was going to be in Chicago—it was in conjunction with a show or something—and that if I would like to see his new lockbolt, that he would be glad to set up a meeting with me.

I discussed this with our management, and I was advised that, in having such a meeting, that it would be necessary that it be clearly understood that nothing was being accepted in confidence.

With this, as I recall it, a letter was written for my signature to Mr. Stau, pointing out that it would have to be understood that any meeting with him regarding any new developments he had would have to be without any strings [fol. 804] attached to them. It would not be accepted in confidence.

From this, I believe, there was a letter from Mr. Stau then, saying that I had misunderstood his intent, and really what he wanted to talk about was getting a license from Huck.

And with that, this letter was written, explaining to him that we were not in a position at that time or in—we were not at that time considering additional licenses.

Q. Did you write this letter on your own behest?

A. I would say I did, yes, sir.

Q. Did you have any opportunity to consult any of your superiors prior to writing this letter?

A. I am certain that I did, but to specifically say there

was a meeting held or anything, I could not answer that, because I had consulted with my superiors previously and in setting up the previous letter that I had written to Mr. Stau explaining that I could not accept anything in confidence.

Q. By the way, is Mr. Stau here in the court room today?

A. He is, sir.

Q. Mr. Mathews, I now show you Government Exhibit marked No. 93, and ask you to examine it. It is a two page document. Will you examine both pages, please?

A. (Witness complies.)

Q. Who wrote each of those letters?

[fols. 805-807] A. I beg your pardon, sir?

Q. I say, can you tell me who wrote each of those letters?

A. I wrote them, sir.

Q. May I have them, please?

A. (Hands exhibits to Mr. Lipson.)

Mr. Lipson: Prior to offering these letters, Government Exhibit No. 93, I will show to defense counsel for examination and possible objection.

Mr. Haggerty: No objection, may it please the Court.

The Court: Mr. Pomeroy?

Mr. Pomeroy: No objection.

The Court: It may be received.

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[fol. 808] Mr. Lipson: The first page of the letter has a distribution list on it, which I will read to you and ask you, Mr. Mathews, to identify the position held by each of these gentlemen, as I read their names in the distribution list.

Armour?

A. President of Huck.

Q. Benkert?

A. He's vice president of Huck.

Q. Reynolds?

A. Mr. Reynolds is an officer in the company, and I don't remember his exact title. I think it was treasurer.

Q. Stern?

A. Mr. Stern was secretary of the company.

Q. Is Mr. Stern in the court room today?

A. Yes, he is.

Q. Clute?

A. Clute was a division manager.

Q. Scott?

A. Scott was an engineering representative in the local [fol. 809] San Francisco area out there, I believe.

Q. Westriek?

A. Westrick was manager of the order department.

Q. Villacres?

A. Villacres was Western Division manager.

Q. T&C File?

A. T&C File was a Terms and Conditions, Terms and Contract File that I maintained.

Q. File?

A. And the file was a general sales file.

Q. Dickenson?

A. Mr. Dickenson is the president of the Townsend Company.

Q. I show you the distribution list on the second letter attached.

Is that the same distribution list or are there any differences?

A. There are differences.

Q. What are the differences?

A. We have Mr. Tenny on the one letter. He was the Eastern Division manager. We have Mr. Hugin, who was also—an engineering representative, handling this particular account, shown in this letter, and we have Mr. DeLoach, who was the Southern Division manager and who had the third Lockheed Plant, which was down at Marietta.

Q. Are all the other names that were on the first letter [fol. 810] also on the second letter?

A. They are.

Q. Do you recall any discussion with respect to the six-month price—well, to the six-month firm price guarantee between Huck Manufacturing Company and any of its customers during your tenure as vice president in charge of sales?

A. Well, this was one of the big items in the particular document we—we were just looking at.

Prior to this negotiation with Mr. Warren, I believe the Lockheed agreement had a twelve-month price protection and, due to the continual creep in the cost of manufactur-

ing, we were no longer able to guarantee twelve-month price protection on orders.

Q. As a result, we were successful in negotiating with them and, to the best of my knowledge and recollection, there were eight or ten other companies that we had special terms and conditions negotiated with.

Normally, it—it centered in our change with—it was set off as a chain reaction by the change in our basic policy when we discontinued the twelve-month price protection as a basic selling policy.

Q. Did you put Mr. Dickenson's name on the distribution list of these two letters?

A. I did not.

Q. Mr. Mathews, are you aware of any occasions when [fol. 811] Mr. Armour and Mr. Dickenson met together while you were employed by the Huck Manufacturing Company?

A. Yes, I am.

Q. What occasions were these, starting from the earliest you can recall?

A. I believe there was an occasion when Mr. Armour and myself visited the Townsend Plant in New Brighton, at which time we met with Mr. Dickenson and at which time, to the best of my recollection, was my first trip through their new facility they were not completely moved into yet.

Q. What was the approximate date of that visit?

A. I would presume it was probably in '56 or '57.

Q. When was the next time that you knew Mr. Armour and Mr. Dickenson met to your knowledge, personal knowledge?

A. I cannot recall well enough to say that they were in sequence. I only remember vaguely that possibly two or three times they were together. I have a recollection of a meeting in Chicago.

Q. About what year was that?

A. This would have been probably in '57, possibly '58. My only real recollection of this meeting was that the Townsend Company had developed a new electric power tool for installing fasteners up through half inch, and we had spent considerable development time and monies in

trying to get a power tool which you can plug into any 110 outlet.

[fol. 812] And Mr. Benkert and myself went to Chicago, and, I believe, Mr. Buster was there.

Q. Who is Mr. Buster?

A. Mr. Buster is vice president and general manager of the Cherry Rivet Division of Townsend, and I believe Mr. Ketchum.

Q. Would you identify him, please?

A. Mr. Ketchum, I can't tell you his title. He heads up, I believe, engineering and art research and development for the Cherry Rivet Division of Townsend.

And Mr. Armour, and, I believe, Mr. Dickenson was at that meeting. It seems to me like there was a time or two that Mr. Dickenson visited our facilities, but I have no specific recollection of a meeting of any kind that——

Q. (Interposing) Which particular facility do you mean?

A. The Huck facility here in Detroit, but I have no specific recollection of a particular meeting or anything like that.

Q. Mr. Mathews, do you recall meeting with any Townsend personnel where Mr. Dickenson and Mr. Armour were not present?

A. Yes, there was a previously testified to meeting that Mr. Looker and I traveled to the Townsend Company.

I was also with Mr. Looker when we made the presentation at the meeting, the sales meeting in Homestead, Virginia.

Q. When you refer to the visit with Mr. Looker at the Townsend Company, is that the one where there was some [fol. 813] testimony about freight equalization?

A. That is correct.

Q. Do you recall any other meetings?

A. It seems to me like there was another meeting that we had in New Brighton. I do not recall now who accompanied me from Huck Manufacturing Company, but I recall it—the gist of our problem was that they were not moving ahead fast enough with the development of the larger diameter lockbolts and we were pursuing with them the developments they had made to date in producing the half inch, and the 5/8" diameter lockbolts.

Q. You recall the year in which this last meeting took place?

A. It would probably have been in 1957, but I cannot say for sure.

Q. Do you recall—I am sorry. I thought you had completed your answer.

Do you have any other recollection?

A. I have a recollection of at least two visits to the Cherry Rivet Division's Plant in Santa Ana.

Q. Could you relate this by time?

A. The first occasion that I visited there was sometime shortly after Mr. Looker had resigned, and I had taken over, which again was my first visit to get acquainted, to see their facilities and meet the personnel at the Cherry Plant.

The only other visit that I recall being at the Cherry [fol. 814] Plant was with regard to a collar problem we were having, in that they were manufacturing steel collars, and they were buying steel collars from us, and this was confusing my ability to deliver to my customers.

And I was trying to encourage them to get moving on this phase of their work.

Q. What was the approximate time of this visit, the steel collars?

A. It would probably have been in '57 again, sir.

Q. Do you recall whether any officials of the Townsend Company visited the Huck facilities while you were present, apart from the already testified to incidents?

A. Yes, I remember—I have a recollection of the two boys from Cherry traveling to Detroit, meeting with us in Detroit, I should say, at the plant, and I can't tell you the year, to be honest with you, but I recall it because they had developed a new locked spindle rivet, and they were showing it to us to see if we were interested in taking a license to make this rivet.

Q. You say the "boys". Can you remember any of the individuals?

A. I know Milo Ketchum was there. Who accompanied him, I can't tell you for sure.

From our end of it, we would—we probably had our various department heads in from manufacturing and I know that Mr. Brilmyer was there, because I recall that

[fol. 815] Mr. Ketchum went down into the shop with Mr. Brilmyer and showed him how the rivet functioned and, I believe, actually installed some for him and left them, so that Huck could run tests on the parts.

Q. These were not the lockbolts, I take it?

A. No, these were locked spindle blind rivets.

Q. Do you recall any other meetings of this nature—that is, where the Townsend People came to the Huck facility?

A. I do not recall other meetings, no, sir.

Q. Do you recall a person named John Roy?

A. Yes, I do, sir.

Q. Who is John Roy?

A. Who is he?

Q. Well, whom do you remember him as having been?

A. I remember John Roy as having been with the Cherry Rivet Division of the Townsend Company, and, I believe his capacity there, when he left, was sales manager.

Q. Is Mr. Roy in the court room today?

A. Yes, sir.

Q. Do you ever recall ever having had a meeting with Mr. Roy while he was an official with Townsend?

A. I do not specifically recall a meeting with Mr. Roy. I did some research and Mr. Roy did visit our facility, along with two other gentlemen from Cherry.

I do not recall their names at the moment.

[fol. 816] This, I believe, was somewhere in the early part of 1960, and by "our facility" I mean the Huck Hawthorne Branch in Hawthorne, California, but I do not recall the meeting and the only occasion I do recall that any of the Cherry people came out to our facilities was—we did have a tool orientation program going out there, with the line of hydraulic lockbolt tools.

This was fairly new to our own people out there and it seems to me like their—I recall the Cherry people coming in for viewing this, with an eye to how they might use it in their own sales promotion.

Q. May I ask you a question? You are from Southern California now, I understand, from your earlier statement?

A. At the present time I am, yes, sir.

Q. Right. What is the geographical relationship between Hawthorne and Inglewood?

A. Well, without having ever clocked it, I would say

that Hawthorne and Inglewood are probably five miles apart.

The——

Q. (Interposing) That's a sufficient answer——

A. (Interposing) That's sufficient?

Q. (Continuing)—for the purposes of the question.

Do you ever recall meeting Mr. Roy on any other occasion?

A. Yes, I met—on my early visit to the Cherry Rivet Division that I previously mentioned, while Mr. Chilcoat [fol. 817] was still in charge of sales at Cherry, Mr. Roy was there then and I met Mr. Roy at that time.

Q. Did you ever meet him on any other occasions?

A. I do not have a recollection of having met him on other occasions.

Would it refresh your recollection if I reminded you of the Boeing Wichita Plant?

A. I do not specifically recall his being down there, no, sir.

Q. Do you recall any Townsend personnel meeting with you at that place?

A. Yes, I remember that, but——

Q. (Interposing) About what time was it; do you know?

A. Milo Ketchum was down there. Well, this could have been anytime. I would again have to say that it's probably '57 or '58.

Q. Do you recall having had any conversations over the telephone with Mr. John Roy?

A. I do not recall any, no, sir.

Q. What was the nature of this function in Virginia that you and Mr. Looker went to that has come up several times?

A. Well, to the best of my recollection, Huck, as a licensor, was not too happy with the lack of sales on the part of the licensee. It didn't seem like they were getting started, whether they were going out and generating new business and expanding the market, and they had their [fol. 818] national sales meeting coming up from the Townsend Company and they invited the licensor to use this opportunity to try and teach their people the proper or, at least, the Huck method of presenting the product

and to discuss the basic industries that the product applied to.

And, as I recall it, we had some hour or hour and a half on the program, and this was the entire thing. We were not in the meeting per se, other than for the time that we were on, from 3:00 to 4:30, or whatever the time was.

Q. This is the oration that we have previously heard of?
A. This is the oration we have previously talked about.
Q. Did you participate in the oration?
A. Yes, I did, sir.
Q. You participated?
A. Yes, sir.

The Court: Let's recess here. We will take a recess.

(Whereupon, a short recess was taken.)

[fol. 819] AFTER RECESS

GEORGE Q. MATHEWS, a witness called on behalf of the Government, having been previously duly sworn, resumed the witness stand and testified upon his oath, as follows:

The Court: You may proceed.

Mr. Lipson: Thank you, your Honor. I have no further questions on direct examination, of Mr. Mathews.

Mr. Haggerty: Perhaps you can help me. I am looking for Exhibit No. 87. Do you know which pile you put them in?

Mr. Esherick: I just put them in order for your benefit, Mr. Haggerty; they are all in order.

Mr. Haggerty: That is dangerous, when I do it.

Mr. Lipson: Maybe Mr. Esherick better find it, if he put it in order.

Cross-examination.

By Mr. Haggerty:

Q. Referring to the Government's Exhibit 87, Mr. Mathews, which doesn't mean a thing to you sitting up there on the witness stand, but to refresh your recollection it consisted of two sheets. One——

A. (Interposing) Yes, sir.

[fol. 820] Q. (Continuing) —is a model letter to be sent to the customers?

A. Yes, sir.

Q. Now this letter was read in part by my brother, but I will read the entire letter. It is on the stationery of the Huck Manufacturing Company, and this letter was drawn up by yourself?

A. I could not testify that I actually drew up the letter; it was drawn up in my department.

Q. But you approved of it?

A. I approved of it, yes.

Q. Yes. And it is August 30, '57. To our customers. Subject: Price Adjustment.

> "Effective September 1, 1957, a general price adjustment will be made on Huckbolt fasteners, Blind Huckbolt fasteners, Oversize Structural Blind rivets, Tau Bolts and Daisy blind rivets."

Incidentally, that part—that part was read by my brother. Incidentally, what are "Tau" (spelling) T-a-u Bolts?

A. This was a tradename that we applied to a shear-type blind bolt.

Q. Well now that don't mean much to me, and I doubt if it does to the jury. It is a shear-type blind bolt?

A. Yes, sir.

[fol. 821] Q. I guess we will have to settle for that. Now, —And what is a Daisy blind rivet?

A. This was a rivet developed specifically for the building trade, which was a pre-assembled two-piece rivet that was installed from one side of the sheet, had a characteristic of—splitting on the blind side to form a joint, and the configuration of it had the appearance of a daisy, so we had adopted the tradename Daisy to identify this.

Q. That is the stem would split?

A. No, the sleeve would split.

Q. All right. The sleeve would split?

A. That's right.

Q. And it would spread out and lay flat then against some object?

A. Right.

Q. Like the petals of a daisy,——

A. (Interposing) Yes, sir.

Q. (Continuing) —is that it?

A. Yes, sir.

Q. "This adjustment will reflect the general price increase of aluminum and steel, as well as cost of labor and supplies.

> "We are pleased to report that due to your increased acceptance of our various product lines,"—and what I am reading now has not been read—
> [fol. 822] "we have in some cases been able to effect a price reduction."

In other words, while the price was up on some articles they were able to reduce the price on others, it that true?

A. That is correct.

Q. And then it goes on and appreciate your cooperation and so forth.

You have testified that in your capacity as vice president in charge of sales, it was essential that you have all information possible on all competitors of the lockbolt, is that true, and of your products?

A. Yes, sir.

Q. And you obtained that information from various sources; you stated you obtained it sometimes from a customer who would give you a price list of a competitor, right?

A. Yes, sir.

Q. And at other times your men in the field would actually get—obtain the price from some source or other, is that true?

A. Yes, sir.

Q. Then there would be a compilation of that information for your benefit; a compilation of the prices of your competitors was kept,——

[fol. 823] A. (Interposing) Yes.

Q. (Continuing) is that true? And that was kept for the purpose of knowing what your competitors were charging for anything that was in competition—any article that was in competition with the lockbolt, isn't that true?

A. Yes, sir.

Q. Now, do you recall if you kept price lists on Hi-Shear Rivets?

A. We did, sir.
Q. Of your competitors?
A. Yes, sir.
Q. Did you on the "Briles" taper lock?
A. We did.
Q. Did you keep them on the Hi-Lok?
A. We did, sir.
Q. Did you keep them even on AN bolts and nuts?
A. We did.
Q. Now what are AN bolts and nuts?
A. The AN designation is an Army-Navy specification which sets up certain characteristics for a bolt and nut combinaton such as your strength—your tensile strength, your shear strength, your—it refers to other documents, I believe, in most cases, for the actual configuration tolerances of the manufacturer, but this means that the military has accepted this product for general usage, and once [fol. 824] you qualify and make that quality product why you can compete in that market.
Q. As a matter of fact, could a bolt and nut of the same size and same length take the place of a lockbolt?
A. Many of the applications that we developed were in replacing nuts and bolts, yes, sir.
Q. And is it within your knowledge that some of the airplane manufacturers never used lockbolts?
A. (No response.)
Q. To refresh your recollection did North American ever use lockbolts?
A. The only company that I have a recollection of that I could say that I did not believe ever used them was North American Aviation.

Mr. Lipson: Your Honor, I would like at this time to interpose an objection to this line of questioning on the grounds of relevance, unless counsel feels otherwise, I think we are actually entering into a market study here, and if we are, I would like to make my objection in much greater detail. This is a rather significant important legal question, and we are prepared to do so.
The Court: If I understand the question all right, I do not think—You are not intending to determine the market, are you?
Mr. Haggerty: No, your Honor. I am taking——

[fol. 825] The Court: (Interposing) You may continue.

Mr. Haggerty: (Continuing) —this from a door that was opened on direct examination.

The Court: You may continue.

Q. (By Mr. Haggerty) Do you recall whether or not the Republic used lockbolts or used many of them?

A. I do not recall about that, no, sir.

Q. You do not recall. But the only company that you recall was North American that did not use lockbolts?

A. This is the only one that I recall, yes, sir.

Mr. Haggerty: No further questions.

The Court: Mr. Pomeroy?

Cross-examination.

By Mr. Pomeroy:

Q. Mr. Mathews, I believe you said you came to the Huck Company in 1954, and you left in 1960, is that right?

A. Yes, sir.

Q. So you were there for a six-year period?

A. Yes, sir.

Q. Is that correct? And after you had been there about two years or a little more you succeeded Mr. Looker in charge of the sales department of Huck, is that right?

A. Yes, sir.

Q. This covered sales of all Huck's products, I assume, not just lockbolts?

[fol. 826] A. This covered all of the products, yes, sir.

Q. All right. And I think you said, however, that you did not have charge of things concerning patents and matters related thereto, which had been under Mr. Looker's supervision?

A. That is correct.

Q. You weren't acquainted with those particular matters, is that correct?

A. That is correct.

Q. You devoted yourself to the selling function at the Huck Company; that was your primary concern selling the product, is that right?

A. Yes, sir.

Q. Was there a period of time after Mr. Looker left, or

about the time when he was leaving when you were out in the field learning the customers first hand, or had you already done that? What did you have to do to assume this new position?

A. Well, generally speaking, as I recall it, I was quite familiar with the commercial end of the business and commercial users. When Mr. Looker left there was a void in my own knowledge with regard to aircraft customers and particularly the west coast customers, and I did travel extensively after my appointment as vice president, in getting acquainted at the major airplane companies, and with [fol. 827] our men on the west coast who—while I had met them, I had never worked with them.

Q. This would have been in the latter part of 1956, was it, that you were doing this traveling to a degree?

A. This would have been a period from, roughly, September of '56 to probably the middle of '57.

Q. But you had been more familiar with commercial lockbolts than with the aircraft variety?

A. That is correct.

Q. When you—Soon after you became vice president you wrote to Mr. Dickenson a letter that was introduced as Exhibit 82, which I will show you. Are these still in order, Mr. Haggerty, after you looked at them?

Mr. Haggerty: Well blame me.

Mr. Esherick: Mr. Pomeroy, the big pile there at the top.

Mr. Pomeroy: I will proceed to get them mixed up now.

Q. (By Mr. Pomeroy) Looking at that letter, Mr. Mathews, you address it to Mr. Dickenson in a familiar way of Dear Dick. Is that Mr. Dickenson's nickname?

A. This is his nickname, yes, sir.

Q. How many times had you met Mr. Dickenson before July of '56, if you can recall?

A. I would say that probably a maximum of twice.

[fol. 828] Q. And can you recall those occasions for us; are they the occasions of which you have already mentioned in response to Mr. Lipson's question?

A. To the best of my recollection they would have been the time that I traveled to New Brighton and the time that I attended their sales meeting in Homestead.

Q. Right. They were both—Were they both in 1956?

A. They were both prior to my becoming vice president, yes, sir.

Q. I am wondering if they were both in 1956, so far as you can recall?

A. I could not testify to that, sir.

Q. Now this travel to New Brighton that you speak of, was that you and Mr. Looker that went to New Brighton?

A. Yes, sir.

Q. Anyone else with you?

A. Not to my recollection.

Q. All right. And the meeting at the Homestead in Virginia is what you have already testified about today?

A. Yes, sir.

Q. The meeting in New Brighton to which you refer had what for its purpose; your visit there with Mr. Looker?

A. Well I do not recall any details of that particular visit, and my memory was merely refreshed by hearing previous testimony that I was along.

Q. You don't have any——

[fol. 829] A. (Interposing) I have no definite recollection of anything that took place, other than I do know that Mr. Looker and I made one trip to New Brighton together. I have a recollection of he and I going there together, but the subject matter I *do not recall.*

Q. It escapes you at the moment?

A. Yes, sir.

Q. At the time of the letter, that is Exhibit 82, that is July 23, 1956, did Huck have on hand a substantial inventory of lockbolts or Huckbolts, as they were called in your letter?

A. I could only presume that we did. I have no direct recollection of the size of the inventories.

Q. The question that you were raising here, I take it, was the desirability of adhering to established standards in the manufacture of lockbolts so that minor deviations therefrom would not serve to render inventory on hand obsolete, or unuseable, is that right?

A. This is the interpretation I would place on this, yes, sir.

Q. Standards are important in the manufacture of lockbolts, are they not; adherance to standards?

A. Yes, sir.

Q. And I suppose if there are deviations from the standards then that tends to put a product into a special kind of category which, if the customer kept on using, would [fol. 830] make the previously standard products something they didn't want, is that a fair interpretation?

A. That would be correct.

Q. And your desire here was to avoid unnecessary loss of that sort, is that right?

A. Yes, sir.

Q. Do you recall whether or not you received any reply to this letter, Exhibit 82?

A. I do not recall receiving a reply to this letter, no, sir.

Q. The letter ends up saying, "May we have your comments on this matter."

Do you remember whether you received any—excuse me—any comments either in writing or otherwise at that time?

A. I have been unable actually to associate the circumstances that caused this letter to be signed by myself. It was the transition period, I believe, when Mr. Looker was still there and I was taking over and I am not too certain that maybe he didn't actually write the letter and I put my name on it because he knew I was taking over and would be there for any further follow-up.

Q. All right.

A. But I cannot tell you—I cannot answer your question, I don't believe. I don't have the recollection.

Q. The same problem did persist, did it not, into the future?

A. The problem, to the best of my recollection, existed [fol. 831] up until the time I left the company.

Q. Right. Now I think, Mr. Mathews, you stated that you did not know the terms of the license agreement between the Huck Manufacturing Company and the Townsend Company; that is to say, Exhibit 17 in this case, is that true?

A. I had—I did not have familiarity with it, no, sir.

Q. Yes. You knew that Townsend was, of course, a licensee of Huck,——

A. (Interposing) Yes, sir.

Q. (Continuing) —for the manufacture and sale of lockbolts, is that right?

A. Yes, sir.

Q. And you knew that as such the Townsend Company was quoting identical prices following the Huck Price List, is that a fair statement?

A. On occasion they were able to know they were. I have no way of knowing all the time that they were—whenever there were deviations it usually came back through my salesmen, but generally speaking all price lists were identical, yes, sir.

Q. Now in the period between 1954, the time the license was granted and 1956, in July, you didn't have direct knowledge of Townsend's specific prices in the aircraft industry, I suppose, because you were concerned with commercials?

[fol. 832] A. No, I was aware of the prices.

Q. You were?

A. While my major activity was in the commercial end, we had certain areas within the company that were predominantly commercial with small users of aircraft products, subcontractors and so forth.

Q. All right.

A. And I had complete access and used the complete price list of the company.

Q. I see.

A. Administratively is where the breakdown came basically, just between Looker and myself; he handled the west coast and the prime aircraft areas, and I handled the rest of the commercial users and the men who were pursuing this part of the business.

Q. Right. But you knew, therefore, that Townsend was using the same price list and quoting the same prices, is that right?

A. I did, sir.

Q. Were you aware of the prior price adjustments or changes whether increases or otherwise, that Huck had put into effect between 1954 and 1956?

A. By being aware of them, I am not sure I understand what you mean.

Q. Well there had been price increases between the time that you came with Huck in 1954 and September or October [fol. 833] of 1956, had there not?

A. There had been, yes, sir.

Q. Had you been in charge of putting into effect—that is to say, seeing that they were—new prices were published and circulated?

A. By being in charge, I don't recall that prices were determined any differently while Mr. Looker was there than they were after Mr. Looker left, as far as the basic internal workings of the cost department developing the information.

Q. No, I didn't mean how they were actually computed, but I meant, however, they were made known and published, did you have anything to do with that function?

A. To the best of my knowledge—recollection on that, this was handled through the same people while Mr. Looker was there as it was after he left, yes; the same clerical people handled the distribution.

The Court: Did you yourself?

A. Myself personally, no sir.

The Court: That is what he meant.

Q. (By Mr. Pomeroy) Right. When the price list which became effective October 1, 1956, was being considered for publication you assume, I take it, that Townsend should be informed of this price list so they could make the same adjustments as previously, is that right? That is the price list that was to go into effect on or about October 1?

[fol. 834] A. Is this the one we discussed at length a while ago?

Q. Yes. It is embodied in Exhibit 83, I believe. The announcement to customers is Exhibit 86, Mr. Mathews, which I now hand you, and the announcement to your engineering representatives was Exhibit 85, which I will now hand you.

A. Could I hear the question again, please?

Q. Let me also hand you, so that you will have them all, Exhibit 83, which is your memorandum to Mr. Benkert of September 14, 1956.

Now the question that I was asking you was were you assuming on the day that you—the dates of the consideration of this price increase that was being proposed that, as previously, Townsend would be informed of this adjustment in prices so that they could charge the same prices?

Mr. Lipson: Your Honor, I object. The witness has already testified that previously he didn't do anything about prices.

Mr. Pomeroy: He has testified previously he knew that Townsend was quoting identical prices on the license agreement.

The Court: Between '54 and '56 he said he did not. I think we are now getting to a period after that period, is that right?

Mr. Pomeroy: We are still in the September, '56 period, your Honor.

[fol. 835] The Court: All right. You may proceed.

A. To the best of my recollection I don't recall what motivated this memorandum being written.

Q. (By Mr. Pomeroy) Which memorandum do you mean?

A. Exhibit No. 83.

Q. Right.

The Court: And that has to do with what?

A. That has to do with the question I was just asked, with regard to——

The Court: (Interposing) Policy on prices at that time?

A. As I understood the question, the question was if I thought when this price adjustment was made that it should be passed on to the Townsend Company?

Q. (By Mr. Pomeroy) Yes.

A. And my answer is that I do not recall what caused me to write this, so I cannot answer that I thought what you were thinking.

The Court: About what you are answering.

A. Have I confused it perfectly?

The Court: You have.

A. Would you like to start over? I am sorry.

The Court: I think I understand you, but the record will not.

Q. (By Mr. Pomeroy) When you testified earlier that [fol. 836] you had not seen the specific terms and conditions of the license agreement between Townsend and

Huck, that meant, of course,—included, of course, did it not, that you were not aware of the two year period under which the license would be exclusive and the prices were to—would be maintained identical, is that not true, Mr. Mathews?

A. That is correct.

Q. Therefore, when you wrote the memorandum of September 14, 1956, Exhibit 83, you were not aware of the fact that this happened to be the expiration of that two year period?

A. I was not?

Q. Did you, by the way, sign that memorandum?

A. This memorandum was signed by my secretary, who had full authority to do so.

Q. Do you remember any circumstances concerning your writing it? I mean, were you in the office or were you——

A. (Interposing) No.

Q. (Continuing) —away from the office, or what?

A. I could not tell you if it is something that I had dictated over the phone, or I dictated it prior to leaving on a trip. It was a common practice to put these on the dictating machine and the secretary I had had worked for the two previous vice presidents and—correction there. She had worked for Bob's predecessor—Looker's predecessor and when I came with the company she worked for me [fol. 837] during the time I was sales manager, and I would take the transcribing machine and put a lot of these on at night or at home and she would then go ahead and send them out for me.

Q. Right. Did you sign—Mr. Mathews, on direct examination, I am not sure I understood you, that you felt that you had been instructed to write this particular memorandum, Exhibit 83, by Mr. Benkert, or did you mean the customers' letter raising the—announcing the rise in prices, which is attached?

A. I don't believe I said I was instructed by Mr. Benkert. I believe that I said that I would assume I was instructed by someone to have handled it in this manner.

Q. To get the prices out on a particular effective date and to notify your engineering department and the customers and also the Townsend Company, is that right, that was all embodied by this series——

A. (Interposing) That is a real general description of it, but it——

Q. (Interposing) Yes. Well, this Exhibit 83 refers to the new prices and your letter announcing the prices, doesn't it?

A. Yes, sir.

Q. Now, your letter announcing the prices—the proposed letter is, I guess, on that yellow page, Exhibit 84, correct?

A. I don't have it, sir.

Q. I beg your pardon. Is that the proposed letter to customers?

[fol. 838] A. Yes, it is, sir.

Q. And then Exhibit 85 is the final letter to—I beg your pardon.

Exhibit 85 is the letter to your engineering representatives, is that right?

A. That is correct.

Q. And Exhibit 86, which you have, is the final letter to customers, is that correct?

A. That is correct.

Q. Now, the proposed letter to customers, Exhibit 84, was dated September 14, that went to Messrs. Armour and Benkert, did it not, according to the note in the upper righthand corner?

A. Yes, sir.

Q. And the final letter to customers, Exhibit 86, is dated September 25, 1956, is that correct?

A. Yes, sir.

Q. And your letter to the engineering people of Huck is also dated September 25, 1956, that is, Exhibit 85, is that correct?

A. Yes, sir.

Q. Do you know of any document that was mailed on September 18, 1956, according to the marginal note on Exhibit 83, where it said in handwriting "letter released 9-18-56"?

A. I have no recollection of another letter having been [fol. 839] released. My interpretation of that note on there would be that this rough draft was released on the 18th for printing.

Q. For printing. To go out on the 25th?

A. Yes, sir.

Q. And the effective date of the new prices and other terms was on October 1st, is that right?

A. Yes, sir.

Q. And this price change, Mr. Benkert, which is embraced by these—Mr. Mathews, excuse me.

Which is embraced by these documents embodied, according to Exhibit 86, particularly, a new policy on freight, did it not?

A. It did, yes, sir.

Q. All right. Is that what is meant by the first paragraph of Exhibit 86, where it states "many of our customers request that Huck adopt freight allowed as part of our standard terms of purchase. We are now ready to announce that such a policy"——?

A. Yes, sir.

Q. Is that so? And then, I take it that there was another new departure in this published announcement, of looking again at 86, near the bottom where it says "Orders received on and after October 1, 1956, shall be accepted at new adjusted prices and will be invoiced under terms of 'price in effect at time of shipment,' freight allowed as out- [fol. 840] lined previously—as outlined previously"—is that correct? Is that—was that a new policy or practice that was being instituted at that time?

A. That was, yes, sir.

Q. Now this freight allowed—well, let's talk about freight allowed first.

Mr. Mathews, there has been some reference to freight equalization and freight allowed and f.o.b. in the testimony so far. Can you tell us what change was being instituted here when Huck went to freight allowed?

A. If my memory serves me correctly, we had previously had policy f.o.b. Detroit, or f.o.b. the Los Angeles warehouse, and the customer paid the freight.

The adoption of this freight allowed was a program which meant that if the customer qualified under the minimum requirements, the company would allow freight of their choosing.

If the customer was in Texas, the merchandise cost him the same price laid into his plant as the customer who was in Tennessee or who was in Kalamazoo, Michigan, here.

Q. Have there been any kind of an intermediate plan or policy in effect as between Huck and its customers between the f.o.b. system and the freight allowed system?

A. I don't recall any intermediate plan, no, sir.

Q. Some reference was made in testimony to freight [fol. 841] equalization. Does that mean anything to you at this point?

A. Well, I do not recall freight equalization ever being used in our operation at Huck. There were—I have no recollection of an interim freight equalization program.

Q. Do you recall, Mr. Mathews, that in your couple of contacts with Mr. Dickenson in 1956, or with any other Huck—any other Townsend representative that they had been advocating a system of freight allowed as the method of charging or taking care of the freight problem, that being the simplest and easiest to administer?

A. I don't have any specific recollection of that, no.

Q. You wouldn't say that it wasn't the fact, however, would you?

A. I could not, no sir.

Q. What did it mean, Mr. Mathews, when your announcement said that price in effect at the time of shipment would prevail?

A. This meant that the order would be invoiced at the prevailing published price in effect at the time the shipment was made.

Q. This was a change from some prior practice?

A. This was a change from a prior practice, yes, sir.

Q. What was the prior practice?

A. The prior practice was guaranteed prices for twelve months from the receipt of an order.

Q. Now by that you mean if a customer placed an order, let's say, on January 1 of a particular year and shipments were not made until sometime later in that year, that the [fol. 842] price to the customer would be what the prices were when he placed the order on January 1, even though there had been a price increase between that time and the shipping time, is that right?

A. That is correct.

Q. In other words, if I understand you correctly, Huck was, in effect, guaranteeing the customer against the price raise from the date of his order until the date of shipment,

as long as the shipment was within twelve months, is that right?

A. That is correct.

Q. Now, then, by this October 1, '56 price revision, when you stated the prices in effect at time of shipment, this meant that if any increase in price did occur after the order was placed and accepted, the customer would have to pay the new price in effect at the time of shipment?

A. That is correct.

Q. The new published price list in effect at the time of shipment?

A. Yes, sir.

Q. Is that right? I take it that this particular change or revision was in effect—well, it was just disadvantageous to the customer in effect, wasn't it?

A. Very definitely.

Q. You were removing the protection or guarantee that [fol. 843] you had previously afforded him—the customer, is that right?

A. Yes, sir.

Q. Do you know, Mr. Mathews, whether the Townsend Company followed the Huck lead in this particular matter with reference to the aircraft companies?

A. It seems to me like the Townsend Company did not follow this particular policy with the result that there was a subsequent further change in this particular item where the Huck Company went to a six-month firm price on its purchase orders.

It is a vague recollection at this time, but I do believe there was something there.

Q. Are you able to recall now how long Huck stayed on this shipment policy—that is, prices in effect at the time of shipment will prevail?

A. I would not say how long, no, sir.

Q. Mr. Mathews, this exhibit—or this matter with the Lockheed Company that you testified about in 1958—March of 1958, Exhibit 93, does Exhibit 93 deal with this same problem?

A. I don't believe it is directly related in any way to that previous document, no, sir.

It is similar, but it is not directly related.

Q. I am looking at page two of this Exhibit 93, which

is your letter to the Lockheed Aircraft Corporation of March 7, 1958, where you mention an amendment in your—in Huck's contract with them effective February 12, '58, reading:

> [fol. 844] "Prices herein acknowledged as they apply to each purchase order are firm for six months from date of Lockheed's original purchase order date."

That in effect is a six month protection, is it not?

A. That is correct. However, that was not put into effect with Lockheed until February 12, 1958, as shown in the document.

Q. That is right.

A. And it is my recollection that the previous documents referenced up there which was cancelled by this amendment still contained the twelve month——

Q. (Interposing) Right.

A. (Continuing) —firm prices.

Therefore, this other announcement was to all customers except those where special terms and conditions had been negotiated.

Q. You are talking now about the 1956 announcement which we have just been over, was to all general customers, but not to customers where there were special terms and conditions had been negotiated, is that right?

A. Yes, sir.

Q. All I meant was that in 1958, with Lockheed, you had the same problem confronting you as to how long to protect prices, and you said at that time you were able to reduce [fol. 845] the twelve months protection on negotiations with them to six months, is that true?

A. That is correct.

Q. In 1958?

A. Yes, sir.

Q. And that is what Exhibit 93 reflects, does it not?

A. Yes, sir.

Q. Was this contract with Lockheed—what was it? I will ask you what it was. Was it a requirements contract, an annual contract, or what?

A. Are you referring to page two of Exhibit 93?

Q. Yes. It refers to an amendment to the terms and

conditions signed November 1, 195—I can't read the date on my copy—6, I guess.

1955, which I take it was the original date. Then there were some amendments in '56 and '57.

Now, what were these?

A. To the best of my recollection this did not involve any contract for parts of any kind. This was a condition where the offer to buy on the part of Lockheed and the fine print on the back of their purchase order was in conflict with the terms and conditions on the back of the quotation form, and order acknowledgment form of Huck Manufacturing, and this was an overriding letter agreement to affect a meeting of minds between the two pieces of paper [fol. 846] so that we could do business with them.

Q. I see. All right. Did you have the same twelve month protection in effect with other aircraft companies—you being Huck—during this period 1956 and '58 as with Lockheed, or did they differ?

A. I do not recall the others well enough to positively state. The bulk of the term and conditions problem that we had dealt with things like wording of warranty and this type of thing, more than it did with the price situation or with the firmness of your prices.

Q. You are not able to say whether you had a uniform policy or not with regard to these various aircraft——

A. (Interposing) I cannot, sir.

Q. You stated, Mr. Mathews, that the price lists which Huck published from time to time and distributed to customers, first on an addressograph and then on an I.B.M. machine, went to all your customers, is that right, and that is how you distributed them?

A. Yes, sir.

Q. Are you able to state whether Townsend Company was considered a customer of the Huck Company? Townsend—go ahead.

A. We sold considerable parts to the Townsend Company.

Q. What do you mean "parts"?

A. Lockbolt parts, collars and some pins. And I would assume that you might say that they were a customer, [fol. 847] inasmuch as they were buying and we were selling to them.

Q. All right. Was the Republic Aviation Company a customer of Huck's for lockbolts after you became vice president of sales in 1956?

A. I do not recall the Republic account well enough to answer you, sir.

Q. Well, I mean you were vice president in charge of sales after July, if they had been a good customer, I suppose you would recall it, wouldn't you?

A. If they would have been a big customer, I probably would recall it, but you say—I could sit here at this stage and say this company was and wasn't, with some six or seven thousand customers buying from us. I just don't recall it.

Q. Do you recall whether North American Aviation Company was a customer?

A. I recall that North American Aviation was not a lockbolt customer.

Q. You spoke a little while ago, Mr. Mathews, of learning occasionally from people in the field, meaning your sales people, of instances where the Townsend Company did not follow the Huck prices after you became vice president. Do you recall that a few moments ago?

You said that there were occasional deviations?

A. There were occasions, yes.

Q. Yes. Did you ever take any—what steps did you take [fol. 848] when you found out that this had occurred and you had lost an order to a customer as a result of such price competition or price differentiations?

A. We did the same thing and took orders back in the same manner by cutting prices.

Q. Was this done as a retaliatory method?

A. This was done as a retaliatory method.

Q. Was this done with the knowledge of the officers of the Huck Manufacturing Company?

A. This was done with Mr. Benkert's knowledge.

Q. Are you able to state whether or not it was done with Mr. Armour's knowledge?

A. I cannot positively state it was done with his knowledge, no, sir.

Q. Did anybody in Huck Manufacturing Company ever say to you well, two can play at that game, we can play

the same game; or two can play that game, or words to that effect?

A. With regard to this cutting of prices, you mean?

Q. Yes.

A. I don't recall such words being used. I do recall that there were cases where we would lose orders because of price, and we would discuss it, the order manager and myself, and the next time a large order would come in, why we would usually cut price and take a bigger one away from them than they took away from us, in the beginning, [fols. 849-852] but I don't recall the words that you are using, no, sir.

Q. Did you ever discuss such problems of losing customers or losing a particular order, a part of a piece of business to Townsend, with Mr. Armour or Mr. Benkert?

A. Yes, sir.

Q. Did they ever tell you that this was in violation of an oral agreement that they had with Mr. Dickenson of the Townsend Company?

A. No, sir.

Q. Did you ever hear of an oral agreement that they had, Mr. Armour had with Mr. Dickenson of the Townsend Company for maintaining Huck prices?

A. I never did.

Q. Did Mr. Looker ever tell you about any such agreement?

A. No, sir.

Mr. Pomeroy: That is all, Mr. Mathews. Thank you very much.

The Court: This would be a good—do you contemplate, I assume, doing further direct?

Mr. Lipson: Your Honor, we don't contemplate any further direct examination of Mr. Mathews.

The Court: Any further cross?

Mr. Haggerty: No, your Honor.

* * * * * * *

[fol. 853] ELVERT HUGH STAU, a witness called on behalf of the Government, was thereupon sworn by the Court, was examined and testified upon his oath as follows:

The Court: Would you give your full name to the reporter, please?

The Witness: Elvert Hugh Stau.

The Court: (Spelling) S-t——?.

The Witness: (Interposing, spelling) A- u.

The Court: (Continuing, spelling)—a-u. All right.

[fol. 854] Direct examination.

By Mr. Lipson:

Q. Mr. Stau, for the record, will you give your full name and address?

A. My name is Elvert Hugh Stau (spelling), S-t-a-u; my home is 2405 South Mountain Avenue, Duart (Spelling) D-u-a-r-t, California.

Q. I think you can hold the microphone up closer to yourself, rather than moving forward.

What is your business address, Mr. Stau?

A. 11445 Dolan (spelling) D-o-l-a-n Street.

Q. And with what company are you presently associated?

A. Olympic Screw and Rivet Company.

Q. What is your age, Mr. Stau?

A. 62.

Q. Mr. Stau, when did you start working for the Cherry Rivet Company?

A. 1942.

Q. In what capacity?

A. Well, I don't recall the very first capacity. Shortly after I went there I became production manager.

Q. Was that about what year?

A. That was probably early in 1943.

Q. Did you advance to any other positions in the company?

A. I later became plant manager. Then sales manager, [fol. 855] and then general manager.

Q. And about what year did you become general manager of the Cherry Rivet Company?

A. I believe in 1945.

Q. How long did you remain with the Cherry Rivet Company?

A. I remained with the Cherry Rivet Company until May 1st, 1952.

Q. Now, did the ownership of Cherry change in that period of time?

A. On January 1st, of 1951, the Townsend Company took the Cherry Rivet Company over on a stock merger deal.

Q. And is this the Cherry Rivet Division of the Townsend Company that we heard about before in this case?

A. Yes, sir.

Q. Now, what was the specific date that you said you left Cherry?

A. I believe it was May 1, 1952.

Q. What did you do after that?

A. For approximately one year I was in business for myself. Well, may I back up a moment.

I went directly from Cherry Rivet Company to a drill manufacturing company.

Q. What was the name of that company?

A. Republic Drill, as general manager. After a few months, I made arrangements with them where I became a distributor and took over the West Coast area as a distributor for them.

[fol. 856] Q. For Republic?

A. Yes, sir.

Q. During this period of time did you have any connections with Cherry Rivet Company, or the Cherry Rivet Division of the Townsend Company at this time?

A. Yes, I was—for part of that time I was in an advisory capacity.

Q. How long did you remain with Republic in this arrangement that you have just described?

A. About—well, they continued for some time, however, in 1953—and I don't recall whether it was April or May—I went back to the Cherry Rivet Division of the Townsend Company.

Q. In what capacity?

A. As general sales manager of aircraft sales and manager of local—and sales manager of local sales.

Q. And how long did you remain with Cherry Rivet at that time?

A. Until July 1, 1954.

Q. And at that date what position did you undertake?

A. I left there and went with the Olympic Screw and Rivet Corporation, as director of sales.

Q. And have you remained with Olympic from that time?

A. I have.

Q. And what position do you now hold?

A. I am vice president and general manager.

[fol. 857] Q. Mr. Stau, are you familiar with the early original development of the lockbolt device?

A. Yes, I am.

Q. Would you describe to us your familiarity with these circumstances?

A. Well, in early 1945 I was called to Wright Field to attempt to offer my help in solving a fastening problem that existed at that time. It was quite important.

Q. What is Wright Field, would you describe it? What significance did it have?

A. Well, Wright—Patterson Field is the headquarters—was the headquarters of the United States Air Force during the War.

Q. What was the nature of this problem that they had?

Mr. Pomeroy: If The Court please, I object to this as incompetent, irrelevant and immaterial.

Q. (By Mr. Lipson) Did anyone explain to you what the problem was?

A. Yes.

Q. Who did?

The Court: Well, the objection goes to the materiality. I suppose as background it might be all right.

Mr. Lipson: That is why it is put in, your Honor.

Q. (By Mr. Lipson) Who explained this problem to you?

A. I was called to the equipment laboratory in Wright [fol. 858] Field, and taken down to the equipment lab. I do not remember the individual at the moment with whom I spoke. There were a great many of them.

Q. What was the problem explained to you?

A. The Government was furnishing expendable gas tanks

for fuel tanks for our airplanes in the Pacific Area, and these tanks were being furnished in large numbers because they were expendable, and they were used to give our planes greater cruising distance, and when empty were jettisoned.

And they were shipped—these tanks were egg-shaped and they were in two pieces and were cradled—nested, and were shipped like this. They had to be fastened together after they arrived at destination.

And they had a large number of bolts and nuts to fasten them together with a gasket in between, and they were having a problem because of leakage because they—in fastening the bolts and nuts together, more than one person probably would do it, and they would tighten some of the bolts and nuts tighter than others and thereby induce a leak.

And they were trying to find a fastener that was consistent, that they wouldn't have to depend on the human element as much.

Mr. Pomeroy: If the Court please, I renew my objection.

The Court: I think this is far——

[fol. 859] Mr. Pomeroy: (Interposing) This is all taken under my objection.

The Court: This is far enough.

Q. (By Mr. Lipson) Who was the president of the Cherry Rivet Company immediately prior to the acquisition by Townsend?

A. Mr. William B. Hubbard.

Q. What was your position under him?

A. I was—I answered directly to him as general manager.

Q. Did the Cherry Rivet Company undertake to develop to produce any lockbolt devices?

A. Yes, they did.

Q. Prior to the acquisition by Townsend?

A. Yes, they did.

(Whereupon, Government's Exhibit No. 94, a letter, was marked for identification by the reporter.)

Q. (By Mr. Lipson) I show you Government Exhibit marked 94, and ask you if you can identify the signature on that letter?

A. Yes, I can.
Q. Whose is it?
A. Mr. Hubbard's signature.
Q. May I have 94, please. Thank you.

Mr. Lipson: I show Government Exhibit No. 94 to defense counsel for examination and possible objection.

Mr. Pomeroy: Do you have any copies of this, Mr. Lipson?

[fol. 860] Mr. Lipson: Yes. Would you like one?

Mr. Pomeroy: I would like one, if you have an extra. Thank you.

If the Court please, I will object to the proffered exhibit on the ground that it is relative to a period antedating the indictment.

Antedating the period of limitations relative to this case.

I further object to it on behalf of Defendants Dickenson and Townsend Company as being at a point prior to their connection with the Cherry Rivet Company.

Mr. Dickey: I object to it further, if the Court please, on the ground that it is a document prior to any date of conspiracy alleged in the indictment. The indictment says beginning in 1954, and this is a matter that goes clear back to 1950; has no bearing on this present case at all.

Mr. Lipson: Your Honor, the relevancy of the document is that it will tend to show that prior to the date alleged in the indictment, 1954, commencement of this conspiracy, that these two companies considered themselves competitors and that they—as the document will show, planned to compete with each other on a traditional price basis.

Mr. Pomeroy: That's—well,——

Mr. Lipson: (Interposing) The letter will show the situa-
[fol. 861] tion that existed prior to the agreement, the conspiracy alleged in the indictment.

Mr. Dickey: It is further clearly beyond any period of the Statute of Limitations, if the Court please, and it is a matter that occurred prior to any of the so-called licensing operations that are alleged in this case.

The Court: When were you with Cherry Rivet Company? It goes back to during this period, does it not?

A. 1942.

The Court: To?

A. 1952, and then from 1953 to 1954.

The Court: This was before Cherry Rivet became part of——

A. (Interposing) Cherry Rivet became a part of Townsend in January 1, of 1951.

The Court: If he is permitted to testify as to—and does testify with respect to the situation prior to the statutory period, I see no necessity for exhibits, however. They are merely corroborative of whatever his testimony might be that they were in a competitive field, is that not correct?

Mr. Lipson: Your Honor, I don't believe that this witness would have any personal knowledge of this correspondence beyond his ability to authenticate Mr. Hubbard's [fol. 862] signature.

That is why the document is offered. Mr. Hubbard was the president of the company at this time.

Mr. Dickey: Then, if the Court please, the matter is merely hearsay, this letter he is trying to get in.

Mr. Lipson: Well, I think this is clearly within the shop book rule, your Honor.

The Court: It can—as far as the shop book rule, it might be admitted, but what we are trying to talk about here is whether or not this is too remote or what is the materiality of it.

That is what I am trying to puzzle myself over.

Mr. Lipson: Well, when one considers that the suit between the Huck Manufacturing Company and the Townsend Company commenced in the latter part of 1951, this is almost immediately prior to the suit when the Cherry Rivet Division of the Townsend Company was entering the lockbolt business.

The Court: All right.

Mr. Dickey: This has no materiality, either.

The Court: It might have some probative value and I will receive it for that purpose.

Mr. Lipson: With your Honor's permission I would like to read a selected portion of the letter.

It is on the letterhead of Cherry Rivet Company, 231 Winston Street, Los Angeles 13.

[fol. 863] The Court: I assume that you can identify this signature, is that right?

A. That's the one I just identified.

The Court: Okay.

Mr. Lipson: It is dated July 29, 1950. Addressed to Mr. A. Watson Armour, Jr., Executive Vice President, Huck Manufacturing Company, 141 Jackson Boulevard, Chicago, 4, Illinois.

(Reading):

"Dear Mr. Armour:

"Your price list was received here a couple of days ago. This was a friendly gesture on your part, which I appreciate. Of course, we had been aware of the prices which your salesmen were quoting to our customers, and we had gathered a considerable number of these quotations so that we were able to construct a list for all sizes. This we had been using for quite some little time. I was astonished in comparing your actual list with this one to find how accurate our estimates had been."

I will skip the next paragraph and read the paragraph next to the bottom.

(Reading):

"Our tooling is now almost complete on lockbolts, [fol. 864] and we have scheduled our first deliveries for the first week in August. It has been very gratifying to discover how well this product has been received and what large quantities of them are in use at present or can be used with a good supply. As soon as we run our costs on the first production, we expect to put out a list of these prices. I will be happy to send you a copy of that. Present indications are that it will run substantially below your current offering prices."

The letter closes:

"With very best wishes and kindest regards,

"Sincerely yours,

"Bill Hubbard."

In the upper righthand corner of the letter is a mark—stamp mark A.W.A. III, date, July 31, 1950.

Mr. Pomeroy; Do you have the original letter?

Mr. Lipson: The original is here.

Mr. Pomeroy: That is a photostat. Your exhibit is a photostat.

Mr. Lipson: This is—the original of Exhibit No. 94 is the best original that we ever managed to obtain. This was——

Mr. Pomeroy: (Interposing) Is this an original?

[fol. 865] Mr. Lipson: No, this is apparently a photostat of an original letter. This photostat, however, was a direct production from the files of the Huck Manufacturing Company.

Mr. Pomeroy: Thank you.

Q. (By Mr. Lipson) To your knowledge, Mr. Stau, while you were working with the Townsend Company, did the Townsend Company ever produce lockbolts during the period before you left them the first time, prior to 1952?

A. Are you saying the Townsend Company?

Q. Well, was the Cherry Rivet Division part of the Townsend Company prior to that time?

A. Yes.

Q. Then I mean the Townsend Company, yes.

A. The Cherry Rivet Division Company, to the best of my recollection, did produce some lockbolts early in 1951.

Q. Do you recall a particular customer to whom they sold these?

A. Yes, Consolidated Vultee, or Convair.

Q. Where were they located?

A. Fort Worth. Was a customer.

Q. Were you a member of any particular committees in connection with the Cherry Rivet Division of the Townsend Company in the management of the Company?

A. I was a member of the patent committee of the Cherry Rivet Division.

[fols. 866-867] Q. Do you recall attending a meeting of the Cherry Rivet Division patent committee in about March of 1951?

A. I do.

Q. Do you recall any discussion there with respect to lockbolts?

A. I do.

Q. Would you relate the nature of that discussion, telling us whom you also recall was present?

A. Mr. Hubbard and Mr. Ketchum.

Q. Who is Mr. Ketchum?

A. He is the Chief Engineer of Cherry Rivet Division of Townsend.

Q. Is he in the court room?

A. Yes, he is.

Q. Will you continue, please?

A. Well, the meeting started, as I recall, by Mr. Hubbard reading a letter from Mr. Dickenson with respect to the patent situation with Huck on lockbolts.

Q. Do you recall the contents?

A. The——

Mr. Haggerty: (Interposing) Well, may it please the Court, I object to his testifying on the contents of a letter with no preliminary effort having been made, or explanation given. The letter itself is the best evidence.

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[fol. 868] Mr. Lipson: Your Honor, perhaps we can go about this in a slightly different way that may satisfy these problems that are being raised here.

Q. (By Mr. Lipson) Mr. Stau, do you recall whether anyone at the meeting referred to was delegated to take any notes, prepare minutes?

A. Mr. Ketchum prepared the minutes of the patent [fol. 869] committee meetings at that time.

(Whereupon, a document was marked Government Exhibit No. 95, for identification, by the reporter.)

Q. (By Mr. Lipson) I will show you Government Exhibit marked No. 95 and ask you to turn to the last page of the document.

Does it purport to bear a signature?

A. Yes, it does.

Q. Whose signature?

A. Mr. M. C. Ketchum.

Q. Would you read the title on the very first page of the document, please?

A. Minutes of the Patent Committee Meeting of March 29, 1951.

Q. That would be sufficient. Thank you.

Mr. Lipson: I show Government Exhibit marked No. 95 to defense counsel for examination and possible objection.

Mr. Pomeroy: Do you have another copy of that, Mr. Lipson, please?

Mr. Lipson: Yes.

The Court: What part are you going to——

Mr. Lipson: (Interposing) The very—well, the second paragraph beginning with the words "Minutes."

The Court: Then how far?

Mr. Lipson: Just that.

The Court: Just that one paragraph?

[fol. 870] Mr. Lipson: That is all.

The Court: All right.

Any objection?

Mr. Haggerty: Is that the second paragraph on the first page?

Mr. Lipson: That is right. Beginning with the word "Minutes" and ending with the word——

The Court: (Interposing) "Field".

Mr. Lipson: (Continuing) —"field".

Mr. Pomeroy: I have no objection, your Honor.

Mr. Haggerty: May it please the Court, on behalf of Huck and Defendant Armour I object to it because as far as they are concerned, it is incompetent, irrelevant and as to them, and it shows no connection. This is entirely something—a meeting within the Cherry Rivet Division of Townsend, and until and unless a prima facie conspiracy is proven, it has no application as to us.

Mr. Lipson: I think this is relevant as an admission of a co-conspirator, your Honor, I believe we discussed it before.

The Court: Yes, it is along the same lines as those with reference to Huck meetings and it may be received.

Mr. Pomeroy: I assume, Mr. Lipson, that the document is being offered for the typewritten part of it and not the marginal checks?

[fol. 871] Mr. Lipson: I don't observe any——

Mr. Pomeroy: (Interposing) On page three and page four?

The Court: He is offering only——

Mr. Lipson: (Interposing) I am only offering it——

The Court: (Continuing) —the first paragraph.

Mr. Lipson: The paragraph noted.

Mr. Pomeroy: Oh, you limited it to that?

Mr. Lipson: Well, the title and signature at the conclusion.

Mr. Haggerty: I wish to further place on the record, your Honor, this is prior to the first date charged in the indictment.

The Court: Yes.

Mr. Haggerty: Being 1951.

Mr. Lipson: This document is entitled——

(Reading):

"Minutes of the Patent Committee Meeting of March 29, 1951.

"Minutes of the meeting of February 6, 1951, were reviewed and discussed. Mr. Hubbard reported on a conversation held two or three weeks previously with Mr. Dickenson. It appeared that the tentative conclusion of the Townsend attorneys was in favor of [fol. 872] entering into a license agreement with the Huck Manufacturing Company with respect to the manufacture and sale of lockbolts and lockbolt tools. The basis for this conclusion lay in the fact that it might be possible by such a license agreement to control the lockbolt business and limit it to Huck and Townsend. Such a limitation would be preferable to a legal action which would invalidate the patents and which, by the same act, would open the field to other manufacturers of fasteners. A license agreement would certainly discourage others from going into the field."

Q. (By Mr. Lipson) Mr. Stau, after you originally left the Townsend company and then returned, can you give us the approximate date of your return?

A. I believe it was—I believe it was May 1st. It may have been April 1st of 1953.

Q. And I believe you have already told us that your position was aircraft sales manager?

A. Of aircraft sales manager nationally, and other Townsend products on a local basis.

Q. What were your responsibilities in that position?

A. To promote the sale of the products which we made, [fol. 873] primarily. Almost entirely blind rivets to the airframe industry.

Q. Were you familiar with the events of the Huck-Townsend lawsuit?

A. Well——

Q. (Interposing) Well, were you familiar with the existence of the Huck-Townsend lawsuit at that time?

A. I was familiar with it, yes.

Q. Do you recall, Mr. Stau, whether or not you ever attended meetings with Mr. Dickenson in Pennsylvania during this latter period of your employment, this second phase of your employment with Townsend?

A. Yes.

Q. On how many occasions?

A. There were possibly three. I recall two.

Q. Do you recall a meeting in about May or June of 1954?

A. Yes.

Q. When did this meeting take place? Where did this meeting take place, more specifically?

A. In New Brighton at the Townsend Company in the office of Mr. Dickenson.

Q. Who called the meeting?

A. Mr. Chilcoat.

Q. Who was present at the meeting?

A. Mr. Chilcoat, Mr. Ritchie, I believe, his name was.

[fol. 874] Q. What position did he hold?

A. Assistant to Mr. Chilcoat. I believe Mr. Casner was there.

Q. What position did he hold?

A. I believe he was plant manager of Townsend Company at New Brighton.

Q. And was——

A. (Interposing) I believe also that the treasurer of the company, Mr. Fabiani was present.

Q. Was Mr. Dickenson present at this meeting?

A. Mr. Dickenson.

Q. Was Mr. Horst present?

A. I can't recall whether Mr. Horst was there or not.

Q. What was the nature of the discussion at this meeting?

A. It was a discussion of general sales problems of the company.

Q. Do you remember any of the specific topics that were discussed?

A. We discussed the creating of a commercial blind rivet that would be more competitive than the one we were making, had been making with other competitors in the field. We discussed special items that were made by Townsend to replace these parts made by Townsend with—cold headed parts, which would replace machine parts that were used as fasteners in various applications in the field.

Q. How long did this meeting last?

A. Probably about forty-five minutes.

[fol. 875] Q. And what happened when the meeting was adjourned; everyone just leave or did anything else happen?

A. Mr. Chilcoat remained for a short discussion with Mr. Dickenson.

Q. Was there anyone else there besides the three persons you have just named?

A. I think not.

Q. Do you recall that discussion?

A. Yes, I believe I do.

Q. Would you relate what that discussion was? To the best of your ability who said what.

A. I believe Mr. Dickenson asked me if I was satisfied with the meeting or with the discussion. I told him I wasn't, because I didn't believe that we had discussed some of the subjects enough. We had a little further discussion, and I asked at that time what the status of the lockbolt situation was.

Q. What did Mr. Dickenson say?

A. He told me that they were in the process of attempting to negotiate an exclusive license with Huck for the sale, the manufacture and sale of lockbolts.

Q. Did you say anything to that remark?

A. Well, I had taken the position that I thought we should make our own and not take a license, that we should make our own lockbolts.

Q. Did Mr. Dickenson say anything to you then?

[fol. 876] A. Well, to the effect that he made the decision and that he felt that was the better thing to do.

Q. Did he give any reasons for his decision?

A. That they could better control the market by recognizing the validity of the Huck patent.

Q. Did he mention any other fastener manufacturing firms in the course of this conversation?

Do you recall whether he mentioned the firm of Lamson and Sessions?

Mr. Pomeroy: Leading. Objected to as such.

The Court: He may answer.

A. There had been a discussion in which Lamson & Sessions and R. W. and—Russell, Birdsell—I'm sorry—Russell, Birdsell and Ward was mentioned as possible people who would like to get into the manufacture of lockbolts, if the field were open.

Q. (By Mr. Lipson) Do you recall what Mr. Dickenson said about these firms or said with respect to them?

Mr. Pomeroy: Same objection.

The Court: He may answer.

A. Well, the general idea expressed was that, if we had an exclusive license with Huck, that——

Mr. Pomeroy: (Interposing) If the Court please, I object to a "general idea" that was expressed. I mean, if the witness can give the exact or approximately the exact words, well, that would be within your ruling of [fol. 877] admission but——

The Court: (Interposing) I think that is what he is trying to do. Is it not, sir?

A. Yes, sir.

The Court: All right, go ahead.

A. That we would be in a better position by having fewer or no other competition, other than Huck.

Q. (By Mr. Lipson) Who was present at the time you were talking to Mr. Dickenson, the conversation you have just related?

A. Mr. Chilcoat was there. Whether he was there for all of the discussion or not, I do not remember. I do

remember that he was called away on the phone sometime during the end of this, toward the end of this conversation.

Q. Well, how long did this supplementary conversation to the meeting last, to the best of your knowledge?

A. Possibly ten or fifteen minutes.

Q. What did you do when the conversation terminated?

A. I went back to Mr. Chilcoat's office and he and I went to lunch.

Q. And how long did you remain in the New Brighton after that?

A. I left that afternoon.

Q. How long was it before you left the company?

A. Well, I believe the conversation which I have just testified to took place in March or April of 1954, and I resigned about the first of June, as near the first of June [fol. 878] as I can recall, effective July 1, 1954.

Mr. Lipson: At this time, I ask the Reporter to mark these two documents for identification.

(Whereupon, two documents were marked as Government Exhibits Nos. 96 and 97 for identification by the reporter.)

Q. (By Mr. Lipson, continuing) I show you Government Exhibits Nos. 96 and 97. Can you identify any of these signatures on that, on either of those documents?

A. Only that of Paul Horst.

Q. Does it appear on both those documents or only on one?

A. It appears on both of them.

Q. Thank you. Mr. Stau, what kind of business is Olympic Screw and Rivet Company engaged in?

A. We are engaged in the manufacture of fasteners, both commercial and airframe, aircraft-type.

Q. About how many people does Olympic employ?

A. About 230.

Q. And what is a rough figure of your annual sales?

A. About three and a half million annually.

Q. I am sorry, I didn't hear the last.

A. Annually.

Q. Mr. Stau, who are your superiors at Olympic Screw & Rivet Company? Where do you stand in the chain of command?

A. I am vice president and general manager. Mr. [fol. 879] Maness is the president to whom I report directly.

Q. How do you spell that, please?

A. (Spelling) M-a-n-e-s-s-, initials are S. R.

Q. Has Olympic Screw and Rivet Company, to your knowledge, ever requested permission to—strike the word permission—every requested a license from either of the Defendants here to manufacture lockbolts?

A. We requested a license from the Huck Manufacturing Company to manufacture and sell lockbolts.

Q. About when?

A. Well, I believe the records show that the license was requested by Mr. Maness prior to my requesting one. My request was in 1957.

Q. To whom did you make this request?

A. Mr. Mathews.

Q. Was it written or oral?

A. It was made orally in the beginning and later, within a week or two, clarified in a letter.

Mr. Lipson: Will the reporter mark this document?

(Whereupon, a letter was marked as Government Exhibit 98, for identification, by the reporter.)

Q. (By Mr. Lipson, continuing) Mr. Stau, I show you Government Exhibit marked 98, and ask you if you can identify that exhibit? Tell me who wrote it?

A. This is a letter written by me to George Mathews of [fol. 880] the Huck Manufacturing Company.

Q. Please hold 98. Is that the written request—strike that.

May I have 98?

Mr. Lipson: I show this document to defense counsel for examination and possible objection.

Mr. Haggerty: No objection, may it please the Court.

Mr. Pomeroy: We have none either.

The Court: It may be received.

Mr. Lipson: Thank you.

Q. (By Mr. Lipson, continuing) Is Government Exhibit No. 98 the written request you referred to as the request to Mr. Mathews?

A. It confirms my verbal request, clarifies my verbal request, yes.

Q. I am asking, is this the copy of the letter that you referred to before?

A. Yes.

Q. All right.

A. Yes, sir.

Q. Now, I show you Government Exhibit No. 92, already admitted in evidence, and ask you if there is any relationship between the documents, the yellow document 98 and Government Exhibit 92?

A. Yes. My letter of July the 11th was answered by [fol. 881] Mr. Mathews on July 19th.

Q. What year?

A. 1957.

Q. All right, thank you.

Mr. Stau, were there any other occasions when you asked the Huck Manufacturing Company or the Townsend Company for a license? A lockbolt license, I'm referring to.

A. In 1958, I attended a meeting at—in—here in Detroit, or, rather, I called here and had a meeting with Mr. Armour and Mr. Benkert at the Huck Plant here in Detroit.

Q. Do you recall how the subject of the lockbolt license came up?

A. Well, it brought up by me after discussion of the other matters. I reiterated our request for it and there was some discussion as to the possibility of the Huck attorneys looking at the drawings, the detail of a lockbolt with which Olympic Screw and Rivet Corporation had developed.

Q. Did you ever get a license?

A. No, sir.

Q. Do you know what kind of machinery is used in manufacturing lockbolts?

A. Yes, sir.

Q. What kind of machinery?

A. Primarily cold heading equipment and thread rolling equipment. There's heat treating equipment involved.

[fol. 882] Q. Does Olympic Screw have such equipment?

A. Yes, they do.

Q. To what extent?

A. Well, the best of my knowledge, Olympic Screw and Rivet Corporation is the largest cold-heading plant west

of Chicago. To the best of my knowledge. I believe that to be true.

Q. By the way, Mr. Stau, has the Huck Manufacturing Company ever had occasion to license Olympic on devices other than lockbolts?

A. Yes, we took—were granted a license——

Mr. Haggerty: (Interposing) May it please the Court, I object to that, irrelevant and immaterial to the issues, anything other than lockbolts.

The Court: I think it might be material.

Q. (By Mr. Lipson, continuing) Would you just name the product involved? I don't want to go into it in a great deal of details.

A. Self-plugging blind rivet.

Q. What kind of machines are they made on?

A. Cold heading equipment.

Q. Now, your firm, Olympic, and Huck have had some litigation, haven't they?

A. Yes.

Q. What kind—would you relate to the jury the nature [fol. 883] of the litigation?

A. May I go back a little bit? I would like to go back a little bit to bring this up to date.

Q. If it's necessary for a complete answer, then I ask that you do so.

A. In 1954, Bob Looker, who was then with Huck, approached the Olympic Screw and Rivet Corporation and suggested that he thought that some of the rivets which we made might be an infringement on a patent that Huck held and that we should take limited license to manufacture those rivets.

Q. Were these lockbolts or were they——

A. (Interposing) These are blind rivets. And after two or three years negotiations,——

Mr. Dickey: (Interposing) If the Court please, I would like to object to this testimony. It has to do with blind rivets and not lockbolts. It is immaterial and it is irrelevant to this suit.

Mr. Lipson: Well, I think it is relevant only to——

The Court: (Interposing) I think that there might be relevance in reference to other matters in these things,

otherwise we do not get a true picture that the jury must have in this matter. I think that it probably is material. I cannot tell, but I think it has probative value.

You may proceed.

[fol. 884] A. In 19— about 1956, I believe it was, we had prepared what—in conjunction with Mr. Looker—what we thought was the final draft of the license arrangement that we would make with Huck for the blind rivets.

Shortly after that, I was told that Mr. Looker had left the Huck Company, and possibly a year or year and a half later, Huck filed suit against Olympic Screw and Rivet Corporation for infringement on this patent.

They also filed a suit on a methods patent which they had, which they thought we infringed, which was later settled. It was regarding this suit that I primarily went to the offices of Mr. Armour and discussed what had taken place, because we had thought that we had done everything possible to make an agreement, satisfactory agreement.

The Court: This was with respect to blind rivets?

A. Yes; sir.

The Court: All right.

A. And following that meeting, there was another meeting at which—at which the situation was settled and we subsequently did take a license.

Q. (By Mr. Lipson, continuing) What happened to that lawsuit?

A. The one concerning the license was dropped, because we took a license. The one concerning the methods of making another item, which was not the rivet covered by the license that we took, was dropped at some later date.

[fol. 885] Q. Did you have to pay any damages to the Huck Manufacturing Company? I say you, I mean Olympic,—have to pay any damages?

A. We didn't pay any damages. We paid royalties, in —for a time, and we paid some royalties for a two year period, I believe, prior to the license.

Q. Do you recall what that amounted to in dollars?

A. No, I do not. I would be guessing, if I told you.

Q. Was it in the neighborhood of a hundred thousand dollars, or less?

A. No. No. I would say it was in the neighborhood of ten, fifteen thousand dollars, possibly twenty.

Q. Is there any other kind of litigation in which the Olympic Screw and Rivet Company and the Huck Manufacturing Company are presently engaged in?

A. Well, I really don't know. We have had a patent interference suit in the courts for some—or in the patent court for some three to four years.

Q. Is this this—with respect to lockbolts or something else?

A. This is in respect to a structural rivet. It is a special blind rivet, which is made for the—is used in the erection of metal buildings.

Q. What is the status of that interference proceeding?

A. To my own knowledge—I do not know—I was informed here in—orally in this court room that we had—[fol. 886] that Olympic had lost the interference suit to Huck. I asked my partner, or, rather, Mr. Maness about it and he had no knowledge at that time.

I talked to him yesterday—night before last, and he told me that it had been confirmed, but he had not seen any of the transcript or any of the papers regarding the decision by the Review Board.

Q. Is Olympic Screw and Rivet Company interested in the outcome of this situation, this suit? When I say this "suit", I am referring to this criminal action now being tried.

A. I would say we are to a degree.

Q. In what respect.

A. Well, Olympic Screw and Rivet Corporation has developed a lockbolt. We have been assured by our attorneys that this lockbolt does not infringe the Huck patents. However, we feel that, if we were to present that on the market, we would be buying another lawsuit, and, very frankly, we can't afford it.

So, we would be interested in the outcome of this trial, as to whether or not we might put our lockbolt on the market.

Q. Has Olympic Screw and Rivet filed a triple damage action against either of the corporate Defendants?

A. No, sir.

Q. Do you know whether Olympic contemplates doing so?

[fols. 887-889] A. We have no such plans.

Mr. Lipson: Your Honor, I have no further direct examination of this witness.

* * * * * * *

[fol. 890] Cross-examination.

By Mr. Pomeroy:

Q. Mr. Stau, in the early part of your direct examination you referred to a meeting of the Patent Committee of the Cherry Rivet Company, or Cherry Rivet Division of Townsend Company, held in March of 1951?

A. Yes, sir.

Q. At which you stated that Mr. Hubbard, the then president, was he, of the company?

A. Yes, sir.

Q. Had reported on a letter, which he had received from Mr. Dickenson, the president of the Townsend Company, [fol. 891] do you recall that?

A. Yes, sir.

Q. And thereafter Mr. Lipson showed you, for identification, the Minutes of the Patent Committee of March 29, 1951, and then read the second paragraph into evidence. Do you recall?

A. Yes, sir.

Q. The second sentence of that paragraph, which was read, states that Mr. Hubbard reported on a conversation held two or three weeks previously with Mr. Dickenson, and then it goes on about Mr. Dickenson's views on a license with Huck.

Does this indicate to you by way of refreshing your recollection that when you referred to a letter that Mr. Hubbard reported on that he was reporting on a conversation that he had with Mr. Dickenson as stated in that letter —in that paragraph of the Minutes?

A. The Minutes do say that Mr. Hubbard reported on a conversation held two or three weeks previously with Mr.

Dickenson. However, my recollection is that he also read a letter.

Q. Does that appear in the paragraph referred to?

A. It does not appear there, no, sir.

Mr. Pomeroy: Will Mr. Lipson stipulate that it does not appear elsewhere in these Minutes?

Mr. Lipson: I have not read the entire Minutes, but if [fol. 892] you assure me it doesn't; I will stipulate.

Mr. Pomeroy: You mean you haven't read these?

Mr. Lipson: Not in the past week.

Mr. Pomeroy: It may be so stipulated.

Q. (By Mr. Pomeroy) Mr. Stau, you say that the Cherry Rivet Division had started producing lockbolts and sold them to Convair back when, in 1950-51?

A. In the latter part of 1950 and the early part of '51, is my best recollection, yes.

Q. And thereafter did they cease manufacturing and selling lockbolts?

A. Yes.

Q. In '51?

A. Yes.

Q. That was because of the claimed infringement by the Huck Company of their patents through this Cherry Rivet product?

A. Primarily. What actually happened before the suit was filed——

Q. (Interposing) When was the suit filed?

A. I don't know, to the best of my recollection. I believe it to be sometime late in 1951, or possibly early in '52, I do not know exactly when that was filed.

Q. Before that there had been letters sent out to customers, is that right?

[fol. 893] A. That is primarily—the primary reason why we quit manufacturing because of letters to customers and the customers not wanting to get involved in a lawsuit.

Q. Right.

A. And cancelling their orders.

Q. Correct. Now, during the—you say you left Townsend Company finally in July of 1954, is that what you said?

A. Yes, sir.

Q. During the remainder of your employment with Townsend, that is to say, from 195—let's say mid '51 to mid '54, Townsend Company was not in production of lockbolts?

A. Not to my knowledge. Not at the Cherry Rivet Division.

Q. Yes. So that as sales manager of Cherry Rivet you had nothing to do with the sale of lockbolts for Townsend Company?

A. Not after early in '51 I did not.

Q. All right. Did I understand you to say, Mr. Stau, that the Olympic Screw and Rivet Company, which you have since been connected, and are now connected, has a license from the Huck Manufacturing Company for blind rivets?

A. Yes, we have such a license.

Q. Yes. Now am I correct in stating that Olympic has sta-ted to produce and sell a blind rivet which Huck claimed infringed Huck patents on blind rivets?

A. Yes, sir.

Q. And did the Huck Company thereafter sue the Olympic Company,——

[fol. 894] A. (Interposing) They brought suit.

Q. (Continuing) —for infringement?

A. For infringement. And it was settled by our taking a limited license on——

Q. (Interposing) Blind rivets?

A. (Continuing) —that portion of the rivets, which we produced that was thought by Huck to infringe this patent.

Q. Then the suit was settled, or dismissed as a consequence?

A. That is correct.

Mr. Pomeroy: Thank you. That is all.

Cross-examination.

By Mr. Dickey:

Q. Mr. Stau, you have testified here that Olympic is interested in the outcome of this present anti-trust suit on account of Olympic's development of a lockbolt?

A. Yes, sir.

Q. Which you have been advised, or Olympic has been advised by its attorneys does not infringe the Huck patents?

A. Our attorneys said that. That is the opinion of our attorneys; our patent attorneys.

Q. Now you have never shown that lockbolt to the Huck Company, have you?

A. No.

Q. Nor asked them whether or not they thought it in-
[fol. 895] fringed their patents?

A. No, sir.

Mr. Dickey: That is all.

Mr. Lipson: The United States has no re-direct of Mr. Stau.

The Court: No further examination? May this witness be excused?

Mr. Lipson: Your Honor, we have no objection to having him excused. He has been here for quite sometime.

Mr. Pomeroy: That is agreeable with us, sir.

Mr. Haggerty: No objection, your Honor.

The Court: You may be excused, sir.

The Witness: Thank you.

(Whereupon, the witness was excused.)

[fol. 896] The Court: I imagine all these people will be delighted to go to California, including you, too, sir.

Mr. Haggerty: You might grant a transfer, your Honor, and we can all go.

The Court: That was never asked for.

(Whereupon, a group of documents were marked Government's Exhibits Nos. 99, 100, and 101, for identification, by the reporter.)

JOHN H. ROY, a witness called on behalf of the Government, having been first duly sworn by the Court Clerk, was examined and testified upon his oath, as follows:

Direct examination.

By Mr. Lipson:

Q. Would you state your full name, please?
A. John H. Roy.
Q. And your address, Mr. Roy?
A. 149 West Road, La Habra, California.

The Court: Another one.

Q. (By Mr. Lipson) What position do you hold presently, Mr. Roy?
A. I am general sales manager, Olympic Screw and Rivet Corporation.
[fol. 897] Q. How long have you been with Olympic?
A. Since October of last year.
Q. Prior to joining Olympic, have you ever been employed by either of the defendants in this case, the Defendant corporations?
A. Yes, sir.
Q. Which corporation?
A. Cherry Rivet Division of Townsend Company.
Q. How long have you been so employed?
A. Four years.
Q. During what period of time?
A. 1957 through 1961.
Q. What position did you hold?
A. Manager of aircraft sales.
Q. Did you hold that position throughout the entire time you just referred to?
A. Yes, I did.
Q. What was the general nature of your duties in that position?
A. The sale of the company's line of products that applied to the aerospace industry; the creation of literature and advertising pertaining thereto.
Q. Were lockbolts among these products?
A. Yes, they were.
Q. Are you familiar with the lockbolt devices?

A. Yes, I am.

[fol. 898] Q. Do you know whether or not Townsend during this period actually sold lockbolt devices—lockbolts as we have used the term in this case?

A. Yes, they sold them.

Q. To whom?

A. Well, to aerospace firms and also commercial firms, shipbuilding firms.

Q. Where were these firms located?

A. Well, throughout the United States.

Q. Well, where was the manufacturing facilities for lockbolts, the lockbolts you were concerned with in your position?

A. At Santa Ana, California.

Q. And where were these customers located physically, in what states were they located?

A. All—well, all—well, not all states, but generally the western portion of the United States, even though some sales were in—made to most all aerospace producers.

Q. Were any other—were any of these customers located outside of the State of California?

A. Yes, they were.

Q. Will you name two or three of them?

A. Boeing, Seattle; Convair, Fort Worth; McDonnell, St. Louis, Missouri.

Q. Thank you. Who was your boss in Cherry Rivet Division?

A. Mr. Ed Buster.

[fol. 899] Q. And who was his boss?

A. Mr. Dickenson.

Q. Were either of these gentlemen stationed at the Santa Ana, facility in California?

A. Yes.

Q. Who?

A. Mr. Buster.

Q. How did Mr. Buster and Mr. Dickenson communicate with each other on company matters, or do you know how they communicated?

A. Not in every case, but in some cases, I do.

Q. Well, generally how?

A. Telephone, personal visit, letter.

Q. I am not clear on the exact status of Mr. Paul Horst

in the chain of command of the Townsend Company Cherry Rivet Division. Where did he stand with respect to Mr. Buster and Mr. Dickenson?

A. I am not absolutely sure that I know either.

Q. Was he considered a superior of Mr. Buster?

A. He might have been.

Q. Well, did he report to Buster, or did Buster report to him, do you know that?

A. I don't believe either way.

Q. Well, did Mr. Dickenson report to Mr. Horst?

A. No, to my understanding Mr. Horst was Mr. Dickenson's assistant, but I am not certain of that.

[fol. 900] Q. In your position, were you familiar with the prices for lockbolt devices?

A. Yes, I was.

Q. Referring to those made and marketed by the Cherry Rivet Division of Townsend Company, is your same answer?

A. Yes.

Q. Are you familiar with the prices for the same or similar type of lockbolts made and manufactured by the Huck Manufacturing Company during this period of time when you were employed there? I am just asking you whether you are familiar with these——

A. (Interposing) Yes, I am, or was.

Q. Is there any relationship between those prices?

A. They were substantially the same.

Q. How did you know of the Huck prices. How did you know what they were?

A. Well, the Huck prices were known to us in two basic ways, one would be through their published—or I should say printed—price lists, and the other were where deviations occurred from these price lists. These might be made known through a salesman that found this out from a buyer, where they had made a deviation, that would be reported to me.

Q. Did you ever obtain copies of Huck price lists?

A. Yes, I did.

Q. How did they come to you?

[fol. 901] A. They came in the mail.

Q. Any particular time?

A. Anytime they were changed.

Q. By whom? Changed by whom?
A. By Huck.
Q. Do you know who mailed them to you?
A. No, I do not.
Q. How many copies came?
A. Six.
Q. How were they distributed?
A. Well, this varied. In my latter portion of my tenure with Cherry, they came to Bill Arnoldy that worked for me.
Q. What position did he have?
A. Well, he was in the technical sales group and primarily was responsible for maintaining current pricing on our products and competitior's products.
Q. Did anyone else in the Cherry Rivet Company get copies of these price lists?
A. Yes. When they came to Mr. Arnoldy they were distributed. I got a copy, a copy went to each of the two men on the order desk, who had day to day dealings with the customers.
I am not sure where the other copies went.
Q. What was the function of the men on the order desk —how did they perform their work? Basically, what kind of work did they do?
[fol. 902] A. They answered the telephone, when a customer called inquiring about price and delivery of lockbolt devices or other Cherry products; they handled mail that came, along the same nature, or teletypes, and would answer the order if a customer gave them one by either means.
Q. Mr. Roy, do you ever recall encountering Mr. George Mathews of the Huck Manufacturing Company while you were employed in the position you have been here testifying about?
A. I do.
Q. You recall the geographic location?
A. Well, there were several meetings.
Q. Well, start with the earliest one you recall. Where did it take place?
A. I believe the first time I met Mr. Mathews, he came to the Santa Ana Plant and the visit, so far as I was con-

cerned, merely an introduction to Mr. Mathews, not much more took place.

Q. Do you recall meeting him on any other occasion?

A. Yes, I met with him in the Huck facility at—I believe it was Inglewood.

Q. Do you know what kind of facility this was?

A. It was Huck's Western headquarters, their western office and warehouse.

Q. About what time was that; can you recall, in time?

A. Well, the best of my recollection, is that it is in late [fol. 903] 1958, possibly early 1959, in that period.

Q. In your position with the Cherry Rivet Division with Townsend Company, did you ever have any occasion to make recommendations with respect to price changes on any of the lockbolt products?

I am referring to recommendations now.

A. With regard to changes? Is that what you asked?

Q. Well, changes in an existing product or prices for a newly developed product or additive to a product part?

A. Yes, I think I had such occasion, but rarely.

Q. To whom would you make these recommendations?

A. To Mr. Buster.

Q. I show you Government's Exhibit marked No. 99, and ask you if you can identify who authored that memo?

A. I did.

Q. May I have it, please?

A. (Hands exhibit to Mr. Lipson.)

Mr. Lipson: I show Government Exhibit marked 99 to defense counsel for examination and possible objection.

Mr. Haggerty: No objection, may it please the Court.

Mr. Pomeroy: We have no objection.

The Court: It may be received.

Mr. Lipson: Thank you.

Q. (By Mr. Lipson, continuing) I show you Government [fol. 904] Exhibit No. 99 and I ask you, Mr. Roy, if this is one of the occasions that you say—one of the occasions that reflect one of the occasions where you made the kind of price recommendation that you referred to before?

A. Yes, this would be one of the occasions.

Q. Can you specifically tell us the price of what was—

was involved in this thing; what was the particular price matter involved in these recommendations?

A. There are several in this memorandum.

Q. Well, could you summarize very briefly what——

A. (Interposing) Well, these—this memorandum refers to the pricing of lockbolts and what extras were to be charged for special finishes or special lubricants, and it also recommends some general pricing policies.

Q. What is the date of this memorandum?

A. January 19, 1959.

Q. Mr. Roy, I show you Government Exhibit marked 100, and ask you if you can identify this signature that appears at the bottom of that document?

A. I can.

Q. Whose signature is that?

A. It's the initialed signature of Mr. Ed Buster.

Q. And what date does that document purport to bear?

A. January 22, 1959.

Q. May I have it, please?

[fol. 905] A. (Witness hands document to Mr. Lipson.)

Mr. Lipson: I show Government Exhibit No. 100 to defense counsel for examination and possible objection.

Mr. Haggerty: No objection, may it please the Court.

Mr. Pomeroy: No objection.

The Court: It may be received.

Q. (By Mr. Lipson, continuing) I would like to read this memorandum, stationery letterhead,

(Reading):

"Townsend Company
"Cherry Rivet Division."

The written name "Buster" is scratched out in red pencil.

(Reading, continuing)

"Date January 22, 1959
"To P. E. Horst."

Red check mark.

(Reading, continuing):

"From E. B. Buster

"Subject: Lockbolt Standards

"Attached is John Roy's memorandum to me of January 19, which outlines recommendations of the Aircraft Sales Department with respect to lockbolt standards.

"You will recognize that these recommendations [fol. 906] represent a backing down on our part on clear chromate. We are not particularly concerned in doing this, because the proposed price increases will automatically take care of the higher cost of inventory of T I and T II.

"The problem is somewhat diminished by the proposal that no two lockbolt parts, which would vary in finish, tolerances, etcetera, would be sold under the same part number. Thus, in effect, the price differential is buried.

"On receipt of this information, I would appreciate your telephoning me for further details before making contact in Detroit.

"Attachment."

And the signature, initials previously described by Mr. Roy.

Mr. Roy, I now show you Government Exhibit marked Nos. 101, and ask you if you can tell me who drafted that?

A. I did.

Q. May I have this, please?

A. (Witness hands documents to Mr. Lipson.)

Mr. Lipson: I show Government Exhibit marked 101 to defense counsel for examination and possible objection.

Mr. Haggerty: No objection, may it please the Court.

Mr. Pomeroy: No objection.

The Court: It may be received.

[fol. 907] Q. (By Mr. Lipson, continuing) Mr. Roy, I show you Government Exhibit No. 101, and Government Exhibit No. 99, which you have just testified to previously

—was your recommendations, and ask you if there is any connection between Government Exhibit No. 99 and 101?

A. Yes, there is.

Q. What is that connection?

A. Government Exhibit No. 99 is the memorandum to Mr. Buster setting forth my recommendations—or correction—the company's recommendations on pricing matters. Exhibit 101 dated February 9th, is the memorandum to people within our company, or those selling products for our company, making these recommendations, or certain portions of them, if—not all were adopted, but making certain portions of them policy.

Q. The recommendations you referred to are those in 99, I presume?

A. Yes.

Q. Do you recall who gave you authority to make these recommendations policy?

A. Mr. Buster.

Q. And with respect to the policy memorandum Government Exhibit 101, what date does it bear?

A. February 9, 1959.

Q. Thank you.

[fol. 908] Mr. Roy, how did you terminate your employment with Townsend Company? What happened?

A. I think by mutual consent I resigned.

Q. Were you asked to resign?

A. I was.

Q. Were the reasons explained to you?

A. I don't think so.

Q. I will leave it there. While you were still employed with the Townsend Company, were you aware or did you receive any information that the Federal Bureau of Investigation was conducting an inquiry into lockbolt matters?

A. Only secondhand.

Q. Well, how did you receive this information?

A. Mr. Buster informed me that they were conducting an investigation.

Q. You say "they". You mean who?

A. The—one of the Government bureaus.

Q. Did he mention which bureau?

A. He did, but I don't know that I recall which one it was. I believe it was the F.B.I., but I wouldn't be certain.

Q. Do you recall the occasion or occasions when he mentioned this to you?

A. Yes. I don't recall the exact date but——

Q. (Interposing) Well, the approximate time and place?

A. But he came into my office and informed me that they were——

[fol. 909] Mr. Haggerty: (Interposing) Well, I object to what Buster told him, may it please the Court.

Mr. Pomeroy: Just a minute, please.

Mr. Lipson: Your Honor, this is admittedly a sensitive area, but I think it is not only relevant but it is extremely relevant to this case.

The Court: It is not a question of relevancy, is it?

Mr. Lipson: Then I don't understand the objection, your Honor.

Mr. Haggerty: The objection is that he is relating a conversation by someone else of Mr. Buster. It is hearsay.

Mr. Lipson: Well, the conversation was, as I understand the witness's testimony, directly to the witness, and what Mr. Buster, a managing agent of the Defendant corporation had to say, certainly is admissible in this case.

The Court: It may be received.

Mr. Pomeroy: I object further on the ground of relevancy, your Honor, incompetent, irrelevant and immaterial to the issues in the case.

The Court: It may be received.

Proceed.

Q. (By Mr. Lipson, continuing) What did Mr. Buster tell you?

Mr. Haggerty: One further question. When was this, time—the time? Your Honor, if it is subsequent—subse-
[fol. 910] quent to the indictment in this case——

Q. (By Mr. Lipson, interposing and continuing) When was the time? Do you recall the approximate time?

The Court: I thought he cleared that up. It could not have possibly been beforehand. The gentleman has testified he left his employ——

Q. (By Mr. Lipson, interposing and continuing) To the best of your recollection, Mr. Roy, when did this occur, the time?

A. About the latter part of 1959, I think. I am not certain of that.

Q. Do you recall what Mr. Buster told you?

The Court: And where was this, in the office?

A. It was in my office.

And he told me that he had been informed that such an investigation was underway, and that he wanted me to go through my files and remove anything that might be damaging.

The Court: Investigation? What kind of an investigation?

A. That they were investigating the pricing practices employed in respect to lockbolts.

Mr. Lipson: I have no further questions of this witness, your Honor.

[fol. 911] Cross examination.

By Mr. Pomeroy:

Q. Mr. Roy, are you aware of the fact that the Government has brought a civil action against the Huck Manufacturing Company and the Townsend Company, as well as the criminal action now in trial?

A. I was so informed when I was supoenaed.

Mr. Lipson: Your Honor, may I interject for a moment?

Before the defense counsel are prejudiced, I think, based upon what we were talking about before, I may have misled defense counsel into not making a motion for a Jencks statement.

I don't want to be——

Mr. Pomeroy: (Interposing) We are not misled. We made a motion for Jencks statements at the beginning of the case, Mr. Lipson.

Mr. Lipson: Well, according to—according to the rules of the Jencks Statute, the motion was to be made after the witnesses had testified. I now hand——

The Court: (Interposing) We will assume the motion has been made. You may proceed.

Q. (By Mr. Pomeroy, continuing) Do you remember testifying on deposition in Los Angeles in the civil action I have just referred to, which is United States of America, [fol. 912] plaintiff, against Huck Manufacturing Company and Townsend Company, defendants, No. 11791, civil action, in the United States District Court for the Eastern District of Michigan, Southern Division, on January 25, 1963?

A. I do.

Q. In that deposition, do you remember being asked, by counsel for Huck Manufacturing Company, for any information you had relative to the matters in suit?

A. I do.

Q. Is that true?

A. Yes.

Q. Did you say anything at all at that time about the request of Mr. Buster that you just testified to in connection with the F.B.I. investigation?

A. Not specifically. However, I thought it was very well covered in my final statement that I made at the time.

Q. Do you remember being asked this question by Mr. Dickey, at page 44 of that transcript, Mr. Roy?

(Reading):

> "Mr. Roy, have we covered here, and have you told us everything that you know concerning this suit and concerning the lockbolt situation between Huck Manufacturing Company and the Townsend Company?"

And that your answer was:

[fol. 913] (Reading):

> "Well, I'm sure I haven't told you everything I know, because again, I say it would be impossible to relate four years of day-to-day situation handling in a two hour period but in general, the scope that we have covered constitutes the scope of my knowledge."

And you were asked the—do you remember giving——

A. (Interposing) Yes, I do.

Q. (Continuing)—being asked that question and giving that answer?

A. Yes, I do.

Q. Do you remember being asked further by Mr. Dickey, at the same page of the transcript of that deposition:

(Reading):

"And it's fair to represent it as what you know?"

And that you answered:

(Reading):

"Yes."

A. I recall.

Q. Do you recall that that was the question and that that was your answer?

A. Yes, sir.

Q. At that time do you remember being further asked [fol. 914] by Mr. Dickey, on the same page:

(Reading):

"You have, no doubt, been interviewed by representatives of the Government regarding the case and I just want to ask this question: Whether you have made known to us here then in this deposition all that you have made known to the Government in connection with the case."

And that you gave this answer on page 45:

(Reading):

"Again, the same answer I gave before, that I may have given them specifics, but in this area I have made known all to you that I have made known to them."

Do you remember being asked that question and giving that answer?

A. Yes, sir.

Q. Do you remember giving—being asked this further question by Mr. Dickey:

(Reading):

"That is, what you have made known to us fairly and truthfully represents what you have made known to them?"

And that you answered:

(Reading):

[fol. 915] "Yes."

Do you remember that question and that answer?

A. I do.

Q. Mr. Roy, when you came to the Cherry Rivet Division of Townsend Company, it was in what year, 1957?

A. That's correct.

Q. In the fall?

A. In September.

Q. September. And whom did you succeed in that—in the office of manager of aircraft sales?

A. Mr. Chilcoat.

Q. What had you done before you came to Cherry Rivet, in terms of employment?

A. Starting where?

Q. Well, let's start at the beginning.

A. I worked on a farm before I went to the University. Graduated and——

Q. (Interposing). I am talking about gainful employment.

A. I was gainfully employed on a farm, supporting myself. I went to the University, put myself through, was employed subsequent to the college training by Standard Oil Company of Indiana. I left them, went with General Motors Corporation.

The tenure with General Motors was interrupted by military service, where I became an experimental test pilot, was honorably discharged and returned to General Motors. [fol. 916] I left General Motors and went with a small company as its chief engineer. Towner Manufacturing Company in Santa Ana.

I left them, and became assistant chief engineer of Marine Manufacturing Corporation.

I was laid off in the general layoff they had, when Marine

dismissed their entire experimental engineering department, and I went back to General Motors.

Q. The same position?

A. Yes, sir, the same position.

Q. Same location?

A. Same location, same plant. I later left General Motors and went to United States Rubber Company and represented them in the Western Eleven States.

And following that, joined Cherry Rivet.

Q. You were with them four years?

A. That is correct.

Q. And then what was your next employment after that?

A. I went with an instrument company, Glassco Instrument Company in Pasadena.

Q. Glassco Instrument Company?

A. Yes, (spelling)—G-l-a-s-s-c-o.

Q. Pasadena, California?

A. Yes, sir.

Q. And when did you leave Glassco?

[fol. 917] A. About April, 1962.

Q. And with whom did you then become employed?

A. I became vice president in charge of sales of Sierra Instrument Company in Sierra Madre, California.

Q. Sierra—Sierra Madre?

A. (Interposing) Sierra Engineering Corporation in Sierra Madre, California.

Q. That was in 1962——

A. (Interposing) Yes.

Q. (Continuing) —that this happened?

A. Yes.

Q. And then are you still with that company?

A. No, sir, I left there to go with Olympic, where I am presently employed.

Q. Olympic Screw and Rivet Company?

A. Olympic Screw and Rivet Corporation, yes, of Downey.

Q. Is that the same company that Mr. Stau is an officer of or an official of?

A. Yes, sir.

Q. He was the witness that preceded you on the stand?

A. Yes, sir.

Q. What is your position with Olympic?

A. General sales manager.

Q. What is Mr. Stau's position?

A. He is vice president and general manager.

[fol. 918] Q. So Mr. Stau is your superior in Olympic, is he?

A. He is.

Q. Mr. Stau was also formerly at Cherry Rivet and Townsend Company, was he not? You knew that?

A. I understand he was.

Q. You, however, were not there, I take it, at the same time Mr. Stau was——

A. (Interposing) I was not.

Q. (Continuing) —at Townsend?

Are you still engaged in the aircraft phase sales or all kinds of sales, more or less?

A. Aerospace, the entire range, aerospace, commercial.

Q. The entire range?

A. Government. Yes.

Q. But, I take it, when you were at the Townsend Company, you were selling aircraft companies—I mean, manufacturers of aircraft, is that right?

A. Aircraft and Government only.

Q. Aircraft and Government. You didn't get into the commercial side of the field?

A. No.

Q. Had your prior experience been in the fastener industry, Mr. Roy?

A. It had not.

Q. So that your acquaintanceship with lockbolts and fast-

[fol. 919] eners derived from your employment with the Cherry Rivet Division?

A. Not entirely, but largely.

Q. Well, you are—you're still—you're still—you're in the fastener field again now, I understand, with Olympic?

A. Yes, sir.

Q. Except that you are not in the—it is not in the lockbolt field, is it? It is in the——

A. (Interposing) We do not make lockbolts.

Q. Yes, you are in basically the rivet, blind rivets?

A. Rivets, bolts, screws.

Q. Mr. Roy, you said on direct examination that you received—"you" meaning Cherry Rivet Division—price lists from the Huck Manufacturing Company as they were published from time to time by Huck, is that right?

A. That's correct.

Q. Did Townsend publish its own price lists?

A. Only in part.

Q. These price lists that you received from Huck, were they for their standard parts, the regular, basic, popular lockbolts?

A. They were for both, the standard and non-standard.

Q. And what form—what were they; were they all in one book or different books or what?

A. All in one large volume.

Q. How big was the volume?

A. Eight and a half——

[fol. 920] Q. (Interposing) Like a telephone book?

A. Excuse me.

Q. Like a telephone book or smaller, larger?

A. Eight and a half by eleven paper, approximately three-quarters to an inch thick.

Q. And this included both the regular or standard parts and the non-standard parts or products; is that right?

A. That is correct.

Q. Now, you said that Townsend partially published price lists? Is that what I understood you to say?

A. That's right.

Q. When did they publish them?

A. Only the standard portions of that book were published by Townsend.

Q. Was this Huck book that you are referring to distributed subsequently to the customers?

A. No, it was not.

Q. What did the customers get?

A. Only the published portion.

Q. Well, what was—I thought you told me about this eight and a half by eleven book, two and a half inches thick? That's published, isn't it?

A. No, this was not published. This was mimeographed and, to the best of my knowledge, within the Huck Company internal distribution only.

[fol. 921] And within our company, there was only one occasion in my four years that a copy of that ever got out of our inter-company hands.

Q. All right. What was the—what part—did the customers get a part of this book; is that what they got.

A. Yes, certain portions of that book were printed in another booklet. They were duplicated.

In other words, there was no difference. The portion that was lifted from that book was printed and disseminated widely.

Q. This was for the general standard products?

A. For those portions that were standard, yes.

Q. And—and the more popular prices and types and shapes of lockbolts?

A. Yes, I believe that's a correct answer.

Q. And the rest of the book, or the other part of it, had to do with so-called, you say, non-standard items?

A. Non-standard items.

Q. And these were, of course, for particular customers basically?

A. Yes.

Q. Not—they were not items that industry, in general, would be interested in?

A. Yes, the industry in general could have been interested in them, but the company might not have been interested in pushing that particular line. It might have ac- [fols. 922-925] counted for a large volume of business and——

Q. (Interposing) All right.

Dollarwise, it might have?

A. In dollars, yes, but it was not necessarily the line that we cared to push for further sales.

Q. Now, we—when you say the—that Townsend published its own price list, you are talking about the standard product price list, aren't you?

A. Yes.

Q. And the prices in this Townsend price list were the same as those in the Huck price list; is that not right?

A. That's correct.

Q. And you are saying that for the—if I understand you correctly, for these other items, these non-standard items that were not generally circulated, the Cherry Rivet Division or the Townsend Company followed and used the Huck price lists for these items when they, themselves, were selling the same products——

A. (Interposing) That's right.

Q. (Continuing) —is that right?
A. That's right.

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[fol. 926] By Mr. Pomeroy:

Q. Mr. Roy, before lunch we were speaking about the price lists of the two companies, Huck and Townsend, and the method in which they were used at the Cherry Plant, Cherry Division. Do you remember receiving, as the manager of aircraft sales, a document in 1948—1958—called "Price Policies on Lockbolt Products"?
A. Not offhand. Can you refresh me?

(Whereupon, a document was marked as Defendants' Exhibit No. EE for identification by the reporter.)

Q. (By Mr. Pomeroy, continuing) I show you now a document that has been marked for identification Defendants' No. EE, and ask you to read it to yourself.

The Court: I just wanted to see the date.

A. (Witness complies.)
Q. (By Mr. Pomeroy, continuing) Have you read it?
A. I have.
Q. Are you able to state, after having read it, whether you have ever seen that document or a copy of such a document heretofor?
A. To the best of my knowledge, I have never seen this document before.
Q. This shows that in the lower lefthand corner:

(Reading):

"cc: E. B. Buster."

[fol. 927] Does it not?

A. That's correct.
Q. (Reading):

"(2)."

A. Yes.

Q. And for identification, this document is dated, in the upper right, June 9, 1958, and is entitled:

(Reading):

"Price Policy—Lockbolt Products"?

A. That is correct.

Q. Your statement is that you have not—you do not recall ever having seen the document before?

A. That's correct, I don't recall ever having seen it before. I believe this applies to commercial lockbolts, but I wouldn't know for sure.

Q. You wouldn't say positively that you hadn't seen it before, I take it?

A. To the best of my knowledge, I have never seen this.

Q. I will relieve you of it.

Mr. Roy, you were testifying on direct examination concerning documents identified as Exhibits 99, 100, and 101, I show you the original of those exhibits (handing exhibits to witness). I would just like to supplement your direct testimony slightly concerning them.

Exhibit 99 was, I believe you testified, prepared by you?

[fol. 928] A. That's correct.

Q. And it is on stationery of the Townsend Company, Cherry Rivet Division and says:

(Reading):

"Memorandum
"From * * * "

Or (Reading):

"To E. B. Buster.
"From John H. Roy," ?

A. That's correct.

Q. And the date is January 19, 1959?

A. Correct.

Q. And the subject is:

(Reading):

"Lockbolt 'Standards' "——

is that right?

A. Correct.

Q. The first sentence of it, Mr. Roy, reads:

(Reading):

"We are recommending the following in an effort to standardize on our lockbolt offerings."

Is it not?

A. That's correct.

[fol. 929] Q. And then follows six numbered paragraphs which comprise your recommendations, is that right?

A. That's right.

Q. Now, the—read the first paragraph for us, will you, please?

A. (Reading):

"1. Through Milo Ketchum's Engineering Department, we should advise the NASC, in connection with their current survey of lockbolt specifications, that we prefer Type II, Class 3 finish with lauric acid lube as a standard on bolt protruding head and countersunk head on all 'T' material lockbolts, and stumps."

Now, for the benefit of the Court and Jury, and also myself, what was this paragraph talking about?

A. Beg your pardon?

Q. What was this paragraph meaning to say in laymen's language?

A. Well, it is—it's a recommendation that the chief engineer's office, headed by Milo Ketchum, respond to the National Aircraft Standards Committee, for which NASC stands.

Q. Yes.

A. That Cherry's position would be that, as a company, we would like to have them put in their standard Type II, Class 3 finish with lauric acid lube on all steel material lockbolts.

Q. Wait just a moment. There's a——

A. (Interposing) I beg your pardon?

[fol. 930] Q. Where do you get steel material?

A. Well, "T" was a code for steel.

Q. I see. And what does Type II, Class 3 finish mean?

A. The Type II, Class 3 finish was a cadmium plated finish.

Q. Cadmium?

A. Cadmium plated finish——

Q. (Interposing) Yes?

A. (Continuing)—applied to the bolt, after which it was dipped in a—a dichromate acid solution and—for added, or additional corrosion protection.

Q. What was the purpose of the cadmium coating that you referred to?

A. Corrosion protection.

Q. Corrosion protection?

A. Yes.

Q. And dichromate finish was—was that also corrosion protection?

A. Yes, added corrosion protection.

Q. Now—now, is lauric acid something, a third thing, or is it part of the cadmium or the chromate plating?

A. No, it is the third and the last added substance, which is a lubricant. We call it a greasy-type lubricant.

Q. Lauric acid is a lubricant. That is the way these lockbolts were—were finished, with the lubricant, and then stocked that way and shipped that way normally?

[fol. 931] A. This varied, but generally speaking, I believe they were put in stock with lauric acid lubricant on them.

Q. Now, what does Type II mean, Type Roman Numeral Two, in this first paragraph?

A. Well, Type II, Class 3 together mean the cadmium plate, with the dichromate finish. What Type II refers to, when you pick it out, I don't know that I would be qualified to answer that.

Q. What does dichromate mean?

A. Dichromate?

Q. Yes.

A. That's a—a salt, or, in other words, a chemical that goes into the water solution, aqueous solution.

Q. Did this numeral and class have anything to do with the—give any indication of the color of this finish?

A. Yes, it—the Type II color, it covers—I believe the —in the military specifications, where types of finish are

called out, to the best of my recollection, in that Type II it does refer to color.

Q. What is the color?

A. Well, I believe it is referred to as irridescent bronze, olive drab or within that color spectrum.

Q. Have I heard it referred to as gold?

A. Yes, gold is a—was what we, within the trade, called it.

Q. I see. Now, paragraph two says what, Mr. Roy?

[fol. 932] A. Want me to read it aloud?

Q. Yes.

A. (Reading):

> "2. Having advised the NASC accordingly, it is recommended that we adopt as a standard, insofar as our manufacturing, stocking, and marketing are concerned, Type II, Class 3 finish with lauric acid lube on both protuding head and countersunk head lockbolts."

And then there's a sub paragraph under numeral two.

Q. Just a moment there, please.

Paragraph two was representing that you adopt it as a standard and in paragraph one—and in paragraph two, does that—when you have done that, you would advise NASC or the—what did you call it, the National Association of——

A. (Interposing) National—National Aircraft Standards Committee.

Q. Oh, National Aircraft Standards Committee.

Was this a part of making this thing a standard item to advise that committee?

A. If I heard you correctly, I think you misinterpreted paragraph one in your summary just now.

Q. Paragraph one says that you preferred this, that you make a decision to manufacture lockbolts this way?

A. No, paragraph one is asking our engineering department to tell the National Aircraft Standards Committee [fol. 933] we would like to do this.

Paragraph two, as I have read it so far, is—is telling us that, assuming that engineering does their half, manufacturing is to do the first part of paragraph two.

So, this is an instruction, if approved.

Q. To the manufacturing end?

A. To the manufacturing department.

Q. All right, thank you.

Now, the next paragraph, under paragraph two, says what?

A. (Reading):

> "Our standards pages, as currently being revised, should call out Type II, Class 3 finish as standard, with Type I, Class 3 finish coated as optional, identified by parts number suffix."

Q. Now, what does Type I, Class 3 mean?

A. Type I, Class 3 means without the chromate dip, just cadmium.

Q. Just cadmium?

A. To the best of my knowledge.

Q. Doesn't it also involve a clear dichromate finish, as distinguished from the amber or gold dichromate finish referred to in paragraph one?

A. Not—to my knowledge, it does not.

Q. In other words, just the cadmium and no chromate finish?

[fol. 934] A. That's it. That's it as I recall it.

Q. Mr. Roy, just pausing here for a moment. This was early 1959. You recall, do you not, that there had been a good deal of problems encountered about this matter of the finish to put on lockbolts and the protective covering to put on them in the aircraft industry between Townsend and the aircraft, certain aircraft industry manufacturers, as well as with the Huck Manufacturing Company?

A. I do.

Q. This had been going on for some months, had it not?

A. Well, let me see. Rather than answer that yes or no, for some time.

I don't know whether it was months or weeks, but for some time, yes.

Q. Could it have been a year?

A. In deference to this memorandum of January 19, I don't recall how long it had been going on when this was written.

Q. But it had been going on for some time, in, I take it,

that there were some controversies about this subject, some differences of opinion about it?

A. Very definitely.

Q. Am I correct in saying that at least the Boeing Aircraft Corporation wanted the producers of lockbolts to go to this gold dichromate finish, this type II, Class 3 finish?

A. They did.

[fol. 935] Q. And am I also correct in understanding that Townsend had held out for the clear finish or maybe just the cadmium finish, anyway, Type I, Class 3, and didn't want to go to this gold finish?

A. No, that's not—not quite correct.

Q. Wasn't it the position of Townsend that their Type I, Class 3 finish would be adequate protection and that the other was not necessary?

A. No. Would you like an explanation or just no?

Q. Well, I think you might explain it, Mr. Roy, if you will.

A. Townsend——

Q. (Interposing) Or your recollection of it.

A. To my best recollection, we did not object to the gold chromate color and were perfectly willing to abide by Boeing's request and supply them gold.

But there were specifically three other aircraft companies who did not want the gold, and so this action memorandum, if we had gone to gold as a standard, would have left three other companies, besides Boeing, very unhappy over having their bolts gold, when they wanted them without the gold coloring.

Q. But there wasn't unanimity in the aircraft industry and there wasn't unanimity in the Huck lockbolt industry, either, was there?

A. That's correct.

Q. And, I take it, therefore, that this recommendation [fol. 936] which was finally arrived at, and represented by this memorandum of yours of January 19th, represented a retreat or capitulation by Townsend on this particular issue, is that not correct; in other words, you then here recommended to make the gold dichromate a standard; is that right?

A. Well, just let me read this document, if you please.

(Short pause.)

Now, would you ask that again?

Mr. Pomeroy: Would you read the question back?

(Whereupon, the last question was repeated by the reporter.)

A. From a sales department standpoint.

Q. (By Mr. Pomeroy, continuing) Well, you can't—you just answer—just answer the question, and then give an explanation, if you want to explain it.

A. Yes, this was a retreat.

Q. Mr. Buster, in the momorandum, Exhibit 100 attached —or which you have in front of you, the memorandum of January 22 date: (Reading):

> "You will recognize that these recommendations represent a backing down on our part on clear chromate."

I assume that's what he's referring to in that letter, in that particular passage? You will agree with that, will you not?

A. Yes, I would assume so, also.

[fol. 937] Q. Now, Mr. Roy, the third paragraph of Exhibit 99 has two subparagraphs, recommending the following non-standard price sheets be made applicable; and then there is an A and B. A is headed "Degreasing." Degreasing, I take it, means removing grease; is that right?

A. Or leaving it off, yes.

Q. This grease, I take it, is another word for the lubricant you previously referred to?

A. Yes.

Q. Which would be the lauric acid treatment?

A. Yes.

Q. The treatment that you referred to?

A. Yes.

Q. And you were recommending there an addition to your standard regular price of two per cent for that operation. That refers back to these dichromate finishes, does it not?

A. That's correct.

Q. Referred to in paragraphs one and two. And if I interpret this correctly—just to shorten it—since you have

—you're recommending that Type II, Class 3 be made a standard finish and Type I, Class 3, non-standard, or optional, that then occasions the increase in the price for the optional and non-standard items of Type I, Class 3; is that right?

A. Yes.

Q. Now, turn to Page 2, Mr. Roy, Paragraph 4. Wou- — [fol. 938] that, please

A. (Reading):

> "No two lockbolt parts varying somewhat in finish, tolerances, etc., should be sold under the same part number. Each part should have its own number (or suffix) and have its own price schedule."

Q. This matter of numbering referred to here, did that represent a change in policy of prior Townsend practice?

A. To a little degree, yes.

Q. Paragraph 5, Mr. Roy, would you read that, please?

A. Yes, Paragraph 5 (Reading):

> "We recommend that so-called standard lockbolts in 'T' material in the future be in grip lengths up to and including -12, and that all grip lengths beyond -12 in 'T' material be considered non-standard, subject to non-standard minimums, pricing, etc."

Go on

Q. Does that represent a change in prior practice?

A. I'm not sure this did. This may have been only a restatement of our practice. I couldn't say for sure on that.

Q. Your opening sentence of your memorandum states (Reading):

> "We are recommending the following in an effort to standardize on our lockbolt offerings."

I would assume, Mr. Roy, that if this practice had been [fol. 939] in existence, you wouldn't have to be recommending it at this point, would you?

A. Well, some things that existed were never made policy. They were—would come and go, depending upon the——

Q. (Interposing) All right.

A. (Continuing)—exigencies of the moment.

Q. And you are not able to say whether this was one of these come and go things or whether it was new?

A. No, not that particular paragraph. I don't recall whether that was something new or just firmed up.

Q. In any case, you wanted to make it a standard, stated policy for the Townsend Company, is that right?

A. Yes. It apparently had not heretofore been stated.

Q. Right. Now, there was another paragraph under five. Will you just read that, please?

A. Yes. Continuing under paragraph five (reading):

> "We also recommend that all aluminum lockbolt pins be made non-standard and subject to non-standard minimums, pricing, etc. Also, the standard pages on same be marked, 'Not available for new design.'"

Q. All right. Do you know how that particular recommendation originated; was that another NASC recommendation, National Advisory Committee or National Aircraft Standards Committee?

[fol. 940] A. Well, you have asked me two questions, now. Do I know how it originated and whether it was NASC.

Q. Yes, I asked you two questions. Can you answer them both?

A. This was not a recommendation of the National Aircraft Standards Committee. To the best of my recollection, this was a recommendation jointly from Huck and ourselves that aluminum be made non-standard.

Q. That it be made non-standard, right. Now, I think you testified this morning—excuse me—Paragraph 6 is the release date, is it not, or the effective date which you were recommending and has nothing to do with the new policies or prices that you were suggesting? It was a date paragraph?

A. That's correct.

Q. Now, Exhibit 101, Mr.—excuse me just a moment. Exhibit 100 is the memorandum which Mr. Lipson read into the record this morning; is it not?

A. That's correct.

Q. And that is the memorandum from Mr. Buster to Mr.

Horst, where he attached and forwarded your memorandum of January 19th that we have just examined——

A. (Interrupting): Correct.

Q. (Continuing): — is that right?

A. That's correct.

Q. Now, February—excuse me—Exhibit 101, dated February 9, 1955, I believe you testified this morning was the [fol. 941] —what did you call it, policy statement or standards statement—which resulted from your January 19th recommendations?

A. I don't recall what I—what adjective I used to describe it, but this was the implementing or making policy of a previous recommendation or parts thereof.

Q. All right. And this emanated from or sprang from your letter or memorandum of January 19th; it that right? It covers the same subject matter, does it not?

A. Some of the same subject matter, yes.

Q. And——

A. (Interposing): Most of the same.

Q. Isn't it true that this February 9 memorandum puts into practice or effects all of the recommendations of your January 19th memorandum, or substantially all of it, at any rate?

A. Substantially all of it, not all.

Q. Mr. Roy, you said, I think, this morning that you were discharged or asked to resign—I don't know just how you put it—from the Townsend Company in 1957? Who discharged you or asked you to resign?

A. May I please correct you? In 1961.

Q. I beg your pardon. I got your first year instead of the last.

A. Mr. Buster.

Mr. Pomeroy: Mr. Buster. That's all.

Mr. Haggerty: No questions.

[fol. 942] The Court: Any redirect?

Mr. Lipson: Yes, sir.

Redirect Examination

By Mr. Lipson:

Q. You took—oh, do you have 99 up there, Mr. Roy?
A. 99, 100 and 101.
Q. Hold on to it, please.
We have already examined 99 very thoroughly, but I would like to ask a few more questions about it.
Particularly the—this is the first of the three documents, the recommending memorandums.
Now, paragraph three, referring to 3-a, would you please read to us that sub paragraph 3-a?
A. Paragraph 3-a, (Reading):

"Degreasing: On Boeing orders for 'dry' or degreased pins (less lauric acide lubricant) the price schedule for this part BAC prints * * * "

Q. (Interposing) Will you stop there and explain what BAC prints are?
A. Boeing Aircraft Company.
Q. Will you continue, then?
A. (Reading, continuing):

"* * * would be higher than its lubed counterpart by [fol. 943] two per cent."

Q. What does that mean in lay language?
A. Well, it means, when they specify, they don't want the lubricant on them, there's a surcharge of two per cent added on to the regular book price.
Q. Now, how did that two per cent figure develop? Do you recall?
A. Yes.
Q. Would you tell us how you arrived at this two per cent recommendation?
A. It was arrived at in my meeting with Mr. Mathews in Inglewood.
Q. Would you refer to the implementing memorandum? That's the one marked Government's Exhibit 101.
Is there any place in that implementing memorandum where this two per cent surcharge figure is implemented as

part of the policy of the Townsend Company, price policy of the Townsend Company, Cherry Rivet Division?

A. Yes, on the second page.

Q. Would you read that particular part, please?

A. (Reading):

"Some customers, particularly Boeing Airplane, when ordering to BAC prints, insist on dry or degreased bolts. (Less lauric acid lubricant) These bolts will show a part number suffix, 'CD.' Please note that this is a change in the meaning of the coding 'OD'."

[fol. 944] Q. Then you gave an example, I assume?

A. Yes.

Q. Will you skip the example and read the next paragraph?

A. (Reading):

"When pricing 'CD' suffixed bolts, add two per cent to the price for all series, rounded off to the nearest five cents."

Q. Is there any more dealing with that particular matter?

A. The next paragraph.

Q. Would you read that as well, then?

A. (Reading):

"Special sheets containing the 'W' and 'CD' suffixed extra charges are being prepared, and will be sent to those of you where applicable when ready."

Q. I would like to refer you to paragraph numbered 3-b on Government Exhibit 99, the recommending memorandum.

Do you have that?

A. I have it.

Q. Would you read that paragraph, please?

A. Paragraph 3-b, (Reading):

"On customer orders for standard lockbolts with the Type I, Class 3 finish (rather than the standard Type II, Class 3 finish), the price schedule for this suffix coded part number would be higher than its non-suffixed counterpart by five per cent. This addition would

[fol. 945] not show on invoices as an extra, since a separate price schedule would be established for such suffixed print parts."

Q. Now, do you recall how you arrived at this five per cent figure that you refer to here?

A. Well, that again was the final results of my meeting with George Mathews in Inglewood.

Q. Was that put into practice in any—put into effect as company policy in any part of the implementing memorandum, Government Exhibit No. 101?

A. Yes, it was on page one.

[fol. 946] Q. Would you read the applicable portion?

A. This may not be where you wish it started, but I will start at the next to the last paragraph. (Reading):

"At the present time, Douglas, Lockheed, and Northrop will not accept countersunk bolts with a gold chromate finish. From time to time there may be other customers who also will object to the gold, and like Douglas, Lockheed, and Northrop, will want clear finish on their bolts, either countersunk or protruding head. Where the customer requires a clear finish, care should be taken to see that the 'W' suffix is added to the part number, even if it is missing from the customer's purchase order.

"On all orders received after February 9, 1959 for 'W' coded bolts, use the price sheet, plus 5% rounded off to the nearest 5¢."

Q. Now, this Inglewood meeting that you referred to between yourself and Mr. Mathews, how come you went? Do you recall why you went to this Inglewood meeting?

A. Yes.

Q. Would you tell us why?

A. This had been a problem, as Mr. Pomeroy suggested for sometime—exactly how long I don't recall now—but it had been—there had been price discrepancies in the market place due to these misunderstandings, or maybe I should [fol. 947] correct that and say due to our offering both clear and gold bolts and also with regard to our offerings on lubricants.

These discussions had been back and forth on the man-

agement level above me and Mr. Mathews was coming to California and it was suggested that perhaps I should meet with him.

Q. Who suggested it?

A. Well, it would be—Mr. Buster suggested that I meet with him and see if we couldn't come to some agreement.

Q. Mr. Roy, have you on any occasion ever discussed the testimony that you might give or intended to give, or expected to give in this proceeding with Mr. Stau your employer?

A. I have not.

Q. Do you recall, Mr. Roy, the date of the deposition that Mr. Pomeroy referred to in the early part of his cross-examination, the date you took this deposition—or was taken of you?

A. The date that my deposition was taken?

Q. That's right. You phrase it much better than I do.

A. Not the exact date, but it was this year sometime.

Q. Do you recall the month?

A. I believe January.

Q. Let me show you the cover of this. Does it refresh your recollection as to the date?

[fol. 948] A. Yes, January 25.

Q. Of this year?

A. Of 1963.

Q. Mr. Roy, when did you first recall to your mind the matter about the instructions you received concerning your duties in respect to the FBI investigation that you told us about on direct examination; when did you remember the incident?

Mr. Pomeroy: What was that question, please?

Q. (By Mr. Lipson) When do you remember the incident about this FBI matter that you discussed on your direct examination?

Mr. Pomeroy: No objection.

A. Subsequent to the deposition, and, I believe, subsequent with my meeting with you, in Downey.

Q. Can you narrow it down to a more specific time?

Well, strike that question.

When did you first inform me of this event?

A. In our interrogation immediately prior to this proceeding.

Q. When?

A. Let me see. I believe it was in our Sunday meeting.

Q. This past Sunday?

A. Yes.

Mr. Lipson: I have no further questions.

The Court: Do you desire further cross?

Mr. Pomeroy: Mr. Dickey is looking for something, your Honor.

[fol. 949] Mr. Dickey: We may, your Honor.

Mr. Pomeroy: If the Court please, may I ask Mr. Roy one or two further questions, occasioned by the re-direct examination?

Cross examination (Continuing)

By Mr. Pomeroy:

Q. Mr. Roy, this morning I referred you to the deposition which you gave in Los Angeles on January 25th in the civil action by the United States against the Huck Manufacturing Company and Townsend Company, No. 12791, in this Court. I now refer you again to that deposition, and I will ask you if you were asked the following questions, and gave the following answers, and I believe I asked the questions.

The Court: Would you give the page, counsel, please?

Mr. Pomeroy: I did, your Honor. January 25, 1963.

Mr. Lipson: The page number.

Mr. Pomeroy: Oh, page, excuse me, sir. Page 68.

Q. (By Mr. Pomeroy, continuing) (Reading):

"Q. Who was your counterpart at Huck Manufacturing Company during the period that you were with Townsend?

"A. They had two. George Mathews during most of the time and the last—I guess the last few months was [fol. 950] a man named Callahan, I believe."

Do you remember giving that—hearing that question and giving that answer?